

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$920,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS (ALLEN COUNTY AGGREGATES, INC. PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO ALLEN COUNTY AGGREGATES, INC. TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT FACILITY: PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS: AUTHORIZING A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS: AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is a municipal corporation and political subdivision in and of the State of Indiana, and by virtue of the laws of the State of Indiana, including Indiana Code, Title 18, Article 6, Chapter 4.5, as recodified and amended at I.C. 36-7-12, is authorized and empowered among other things (a) to make a loan for the acquisition, construction and installation of an economic development facility within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loan, and (c) to enact this Bond Legislation and execute and deliver the assignments and agreements hereinafter identified; and

WHEREAS, this Common Council has determined and does hereby confirm that the acquisition, construction and installation of the Project, as hereinafter defined, will promote the welfare of the people of the Issuer, create or preserve jobs and employment opportunities, and assist in the development of economic, manufacturing and industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount of \$920,000, will be acting in a manner consistent with and in furtherance of the provisions of Indiana Code, Title 18, Article 6, Chapter 4.5, as recodified and amended at I.C. 36-7-12.

1 BE IT ORDAINED by the Common Council of the City of  
2 Fort Wayne, Indiana:

3 Section 1. Definitions. In addition to the words and  
4 terms defined in the recitals and elsewhere in this Bond  
5 Legislation and in the Indenture, the words and terms defined  
6 in this Section shall have the meanings herein specified unless  
7 the context or use clearly indicates another or different  
8 meaning or intent. Those words and terms not expressly defined  
9 herein and used herein with initial capitalization where rules  
10 of grammar do not otherwise require capitalization shall have  
11 the meanings assigned to them in the Agreement, as hereinafter  
12 defined.

13 "Act" means Indiana Code, Title 18, Article 6, Chapter  
14 4.5, as recodified and amended at I.C. 36-7-12, and amendments  
15 and supplements thereto such as are hereafter adopted.

16 "Agreement" or "Loan Agreement" means the Loan Agree-  
17 ment dated as of October 1, 1981 between the Issuer and the  
18 Company, and any permitted amendments or supplements thereto.

19 "Bonds" means the Bonds authorized in Section 3  
20 hereof, including any Bond issued in exchange therefor as  
21 provided in the Indenture.

22 "Bond Fund" means the Bond principal, premium and  
23 interest fund created by Section 8 hereof.

24 "Bondholder" or "Holder" means, initially, the  
25 Original Purchaser, and any subsequent bearer of a coupon Bond  
26 which is not registered as to principal or the principal of  
27 which is registered to bearer, or the person in whose name a  
28 registered Bond is registered; provided that, solely as used in  
29 the definitions of "Determination of Taxability" and "Event of  
30 Taxability", the term "Bondholder" also includes the owner of  
31 an undivided participation interest in any Bond.

32 "Bond Legislation" means this ordinance.

1           "Bond Purchase Agreement" means the Bond Purchase  
2 Agreement dated as of October 1, 1981 among the Issuer, the  
3 Trustee, the Company and the Original Purchaser, and any  
4 permitted amendments or supplements thereto.

5           "Bond Service Charges" for any time period means the  
6 principal, including any amortization or redemption requirements,  
7 interest, and redemption premium, if any, required to be paid  
8 by the Issuer on the Bonds for such time period. Any "late  
9 charge" and any payment required to be made on the Bonds with  
10 interest at the Interest Rate for Advances shall also constitute  
11 a Bond Service Charge.

12           "Code" means the Internal Revenue Code of 1954, as  
13 amended, and regulations promulgated thereunder.

14           "Company" means Allen County Aggregates, Inc., an  
15 Indiana corporation, and its successors and assigns, including  
16 any surviving, resulting or transferee entity as provided in  
17 Section 5.14 of the Agreement.

18           "Completion Date" means the date of completion of the  
19 acquisition, installation and construction of the Project as  
20 that date shall be certified as provided in Section 3.5 of the  
21 Agreement.

22           "Construction Fund" means the fund created by Section  
23 7 hereof.

24           "Coupon" or "Interest Coupon" means a coupon issued  
25 hereunder evidencing an installment of interest on a coupon  
26 Bond.

27           "Coupon Bond Registered as to Principal" means any  
28 coupon Bond at the time registered as to principal in the name  
29 of the Bondholder.

30           "Determination of Taxability" means (i) the filing by  
31 the Company or any other person or entity of any statement,  
32 supplemental statement or other tax schedule, return or document

1 (whether pursuant to Treasury Regulations §1.103-10(b)(2)(vi)(c)  
2 or otherwise) which discloses that an Event of Taxability has  
3 occurred, or (ii) the final assertion by the Internal Revenue  
4 Service or any agent thereof to the effect that interest on the  
5 Bonds is includable in the gross income for federal income tax  
6 purposes of any Holder (other than a Holder who is a "substantial  
7 user" of the Project or a "related person", as those terms are  
8 used in Section 103 of the Code) or (iii) the final adoption of  
9 legislation or regulations or a final determination, decision,  
10 decree or ruling of any judicial or administrative authority  
11 which has the effect of requiring interest on the Bond to be  
12 included in the gross income for Federal income tax purposes of  
13 any Holder (other than a Holder who is a "substantial user" of  
14 the Project or a "related person", as those terms are used in  
15 Section 103 of the Code). For purposes of clause (iii) in the  
16 preceding sentence, a decision, decree or ruling by any judicial  
17 or administrative authority shall be considered final upon the  
18 expiration or waiver of all periods for judicial review or  
19 appeal, as the case may be.

20 "Eligible Investments" means (i) any bonds or other  
21 direct obligations of the United States of America; (ii)  
22 obligations of the Federal National Mortgage Association or the  
23 Government National Mortgage Association; (iii) obligations of  
24 the Federal Intermediate Credit Banks; (iv) obligations of  
25 Federal Banks for Cooperatives; (v) obligations of Federal Land  
26 Banks; (vi) obligations of the Federal Financing Bank; (vii)  
27 bank repurchase agreements issued by a Federal Reserve member  
28 bank, including the Trustee, fully secured by obligations of  
29 any of the kinds specified in clauses (i) through (vi) above;  
30 (viii) time deposits, certificates of deposit, documented  
31 discount notes secured by stand-by letters of credit, bank  
32 reverse repurchase agreements or bankers acceptances of banks



1 or trust companies, including the Trustee, organized under the  
2 laws of the United States of America or any state thereof,  
3 which have combined capital and earned and unearned surplus of  
4 at least \$25,000,000 in dollars of the United States of America;  
5 (ix) commercial paper or finance company paper which is rated  
6 not less than prime-one or A-1 or their equivalents by Moody's  
7 Investors Service, Inc., or Standard & Poor's Corporation,  
8 respectively, or their successors, or both, if rated by both;  
9 or (x) obligations, of any state of the United States of America  
10 or of any political subdivision or other instrumentality of any  
11 such state, which are rated at least "A" or its equivalent by  
12 either Moody's Investors Service, Inc., or Standard & Poor's  
13 Corporation, or their successors, or both, if rated by both.

14 "Event of Taxability" means the occurrence of  
15 circumstances which a Determination of Taxability shall have  
16 found to have occurred, or which shall constitute a Determination  
17 of Taxability, and which results in the interest payable on the  
18 Bond becoming includable in the gross income for Federal income  
19 tax purposes of any Bondholder (other than a Bondholder who is  
20 a "substantial user" of the Project or a "related person" as  
21 those terms are used in Section 103 of the Code), such occur-  
22 rence of circumstances relating to a specific point in time.  
23 Without limiting the generality of the foregoing, the incurring  
24 of capital expenditures in excess of those permitted under  
25 Section 103(b)(6)(D) of the Code, thereby causing any interest  
26 payable on the Bond to be includable in the gross income of any  
27 Bondholder under the Code, shall constitute an Event of Taxabil-  
28 ity.

29 "Executive" means the Mayor of the Issuer.

30 "Final Maturity Date" means October 1, 2001.

31 "Fiscal Officer" means the Treasurer of the Issuer.

32 "Indenture" means the Trust Indenture dated as of

1 October 1, 1981, between the Issuer and the Trustee, including  
2 this Bond Legislation as a part thereof, and any permitted  
3 amendments or supplements thereto.

4 "Issuing Authority" means the Common Council of the  
5 Issuer.

6 "Interest Payment Date" means the first day of each  
7 October and April, commencing April 1, 1982 and continuing  
8 semi-annually thereafter.

9 "Interest Rate for Advances" means the annual rate of  
10 interest which is equal to twenty-one percent (21%); provided  
11 that in no event shall the Interest Rate for Advances exceed  
12 the rate permitted by law.

13 "Legal Officer" means the City Attorney of the Issuer.

14 "Mandatory Redemption Date" means October 1 of each  
15 year, beginning October 1, 1982.

16 "Mandatory Sinking Fund Requirements" means amounts  
17 required by the Bond Legislation to be deposited in the Bond  
18 Fund for the purpose of retiring, on a specified date,  
19 principal maturities of Bonds which by their terms are due and  
20 payable, if not called for prior redemption, at a subsequent  
21 date.

22 "Mortgage" means the Mortgage and Security Agreement  
23 dated as of October 1, 1981, whereby the Company has granted to  
24 the Trustee, as security for payment of the Note and the Bonds,  
25 a mortgage on and security interest in the Project and the  
26 Project Site, and any permitted amendments or supplements  
27 thereto.

28 "Note" means the Promissory Note, in the form attached  
29 as Exhibit C to the Loan Agreement, issued by the Company to  
30 the issuer concurrent with the delivery of the Loan Agreement.

31 "Note Payments" means any and all payments of  
32 principal of and interest, and prepayment premiums or

1 Additional Payments, if any, on the Note.

2 "Original Principal Sum" means \$920,000, the aggregate  
3 original face amount of the Bonds.

4 "Original Purchaser" means The Cincinnati Insurance  
5 Company, an Ohio corporation (as to the Bonds maturing October  
6 1, 2001), and Rex Roof, an individual (as to the Bonds maturing  
7 October 1, 1986), collectively.

8 "Outstanding Bond" or "Bond outstanding" or  
9 "outstanding" as applied to the Bonds, means, as of any date,  
10 any Bond which has been authenticated and delivered, or is then  
11 being delivered, by the Trustee under the Indenture except:

12 (a) Any Bond surrendered and replaced upon exchange  
13 or transfer, or cancelled because of payment or redemption,  
14 at or prior to such date;

15 (b) Any Bond for the payment, redemption or purchase  
16 for cancellation of which sufficient moneys have been  
17 deposited prior to such date with the Trustee (whether upon  
18 or prior to the Final Maturity Date or the redemption date  
19 of any such Bond), or which is deemed to have been paid and  
20 discharged pursuant to the provisions of Section 8.02 of  
21 the Indenture; provided that if such Bond is to be redeemed  
22 prior to the Final Maturity Date, notice of such redemption  
23 shall have been given or arrangements satisfactory to the  
24 Trustee shall have been made therefor, or waiver of such  
25 notice satisfactory in form to the Trustee shall have been filed  
26 with the Trustee; and

27 (c) Any Bond in lieu of which another has been  
28 authenticated (or payment, when due, of which is made without  
29 replacement) under Section 2.04 of the Indenture:

30 and also except that

31 (d) For the purpose of determining whether the  
32 holders of the requisite principal amount of Bonds have made

1 or concurred in any notice, request, demand, direction, consent,  
2 approval, order, waiver, acceptance, appointment or other  
3 instrument or communication under or pursuant to this Indenture,  
4 Bonds owned by or for the account of the Company or any person  
5 owned, controlled by, under common control with or controlling  
6 the Company shall be disregarded and deemed to be not outstanding.  
7 The term "control" (including the terms "controlling", "controlled  
8 by" and "under common control with") means the possession,  
9 directly or indirectly, of the power to direct or cause the  
10 direction of the management and policies of a person, whether  
11 through the ownership of voting securities, by contract, or  
12 otherwise. Beneficial ownership of 5% of more of a class of  
13 securities having general voting power to elect a majority of  
14 the board of directors of a corporation shall be conclusive  
15 evidence of control of such corporation.

16 "Payment in Full of the Bonds" means the first date  
17 when the Bonds are no longer deemed to be outstanding pursuant  
18 to Section 8.02 of the Indenture.

19 "Person" means natural persons, firms, associations,  
20 corporations and public bodies.

21 "Pledged Receipts" means (a) the Note Payments, (b)  
22 subject to the provisions of Sections 3.04, 4.02 and 8.02 of  
23 the Indenture with respect to the Trustee holding moneys for  
24 the benefit of any Bondholder, all other moneys received by the  
25 Issuer, or the Trustee for the account of the Issuer, in  
26 respect of the Agreement or the Project, except certain expense,  
27 reimbursement and indemnity payments which are, pursuant to the  
28 provisions of the Agreement, to be made by the Company directly  
29 to the Issuer or the Trustee, (c) any moneys on deposit in the  
30 Construction Fund, the Bond Fund or the Reserve Fund and (d)  
31 the income and profit from the investment of any moneys while  
32 held in the Construction Fund, the Bond Fund or the Reserve Fund.

1           "Project" means the Project Site and the real,  
2       personal, or real and personal property, including undivided  
3       interests or other interests therein, identified in Exhibit A  
4       to the Agreement, or acquired, constructed or installed as a  
5       replacement or substitution therefor or an addition thereto, or  
6       as may result from a revision of the plans and specifications  
7       therefor in accordance with the provision of the Loan Agreement  
8       or Mortgage.

9           "Project Site" means the real estate and interests in  
10      real estate constituting the site of and part of the Project,  
11      as described in Exhibit B to the Agreement.

12          "Registered Bonds" means Bonds registered in the name  
13      of the holder, including coupon Bonds registered as to  
14      principal (except to bearer) and fully registered Bonds; and  
15      "fully registered Bonds" means Bonds without coupons registered  
16      as to both principal and interest.

17          "Reserve Fund" means the Reserve Fund created in  
18      Section 8(a) hereof.

19          "Reserve Fund Payment" means as to the Bonds, the  
20      amount payable by the Borrower to the Trustee, as determined by  
21      Section 4.1(d) of the Loan Agreement, which amount shall be  
22      deposited in the Reserve Fund and used by the Trustee as  
23      provided herein.

24          "State" means the State of Indiana.

25          "Taxable Rate of Interest" means the Interest Rate for  
26      Advances.

27          "Trustee" means the Trustee at the time acting as such  
28      under the Indenture, originally Indiana Bank and Trust Company  
29      of Fort Wayne, as Trustee, and any successor Trustee as  
30      determined or designated under or pursuant to the Indenture.

31              Any reference herein to the Issuer, the Issuing  
32      Authority, or to any officer or official thereof, shall include

1 those succeeding to their respective functions, duties or  
2 responsibilities pursuant to or by operation of law or who are  
3 lawfully performing such functions. Any reference herein to  
4 any other person or entity shall include his or its respective  
5 successors and assigns. Any reference to a section or provision  
6 of the Code, the Act or to a section, provision or chapter of  
7 the Indiana Code shall include such section or provision or  
8 chapter as from time to time amended, modified, revised,  
9 supplemented, or superseded; provided, however, that no such  
10 change shall alter the obligation to pay the Bond Service Charges  
11 in the amounts and manner, at the times, and from the sources  
12 provided in this Bond Legislation and the Indenture, except as  
13 otherwise herein permitted, or shall be deemed applicable by  
14 reason of this provision if such change would in any way  
15 constitute an impairment of the rights of the Issuer or the  
16 Company under the Agreement.

17 Unless the context shall otherwise indicate, words  
18 importing the singular number shall include the plural number,  
19 and vice versa, any pronoun shall be deemed to cover all genders,  
20 and the terms "herein", "hereof", "hereby", "hereto", "hereunder",  
21 and similar terms, mean this Bond Legislation and the Indenture  
22 and not solely the portion hereof in which any such word is used.

#### 23 Section 2. Determination of Issuing Authority.

24 Pursuant to the Act, the Issuing Authority hereby finds and  
25 determines that the Project is an "economic development facility"  
26 as defined in the Act and that all actions required under the  
27 Act to be taken by the Issuer, the County of Allen, Indiana, the  
28 Trustee and the Company prior to the issuance of the Bonds have  
29 been duly authorized and completed.

30 Section 3. Authorization of Bonds. It is hereby  
31 determined to be necessary to, and the Issuer shall, issue,  
32 sell and deliver, as provided herein and pursuant to the

1 authority of the Act, the Bonds in the aggregate principal  
2 amount of \$920,000 for the purpose of financing costs of  
3 acquiring, constructing and installing the Project, including  
4 costs incidental thereto and of the financing thereof, all in  
5 accordance with the provisions of the Loan Agreement and the  
6 Bond Purchase Agreement. The Bonds shall be designated  
7 "Economic Development First Mortgage Revenue Bonds (Allen  
8 County Aggregates, Inc. Project)".

9 Section 4. Terms of Bonds. The Bonds shall  
10 initially be issued in coupon or fully registered form, or  
11 both, as may be requested by the Original Purchaser thereof,  
12 shall be exchangeable for fully registered or coupon Bonds in  
13 the manner and on the terms provided in the Indenture, shall be  
14 numbered from 1 upwards, in the case of coupon Bonds, and from  
15 R-1 upwards, in the case of fully registered Bonds, and shall  
16 be in substantially the forms set forth therefor in the  
17 Indenture.

18 Bonds in coupon form shall be in the denomination of  
19 \$5,000 each, shall be registrable as to principal, and shall be  
20 dated as of October 1, 1981. Bonds in fully registered form  
21 shall be in the denominations of \$5,000 and any multiple  
22 thereof, and shall be of a single maturity of the same series;  
23 provided that the Fiscal Officer with the approval of the  
24 Trustee may authorize issuance of one or more fully registered  
25 Bonds representing more than one maturity of the same series  
26 with appropriate changes in the form of such a Bond to cover  
27 more than one maturity, such approval and authorization to be  
28 evidenced as provided in the Indenture.

29 East Bond in fully registered form shall be dated as  
30 of the date of its delivery or exchange; provided that if at  
31 the time of authentication of any fully registered Bond  
32 interest is in default thereon, such Bond shall be dated as of

1 the date to which interest has been paid, and that if fully  
2 registered Bonds are initially delivered to the Original  
3 Purchaser (or any of them), such fully registered Bonds shall  
4 be dated as of October 1, 1981.

5 The Bonds being delivered to The Cincinnati Insurance  
6 Company, as Original Purchaser, aggregating \$900,000 in  
7 principal amount, mature October 1, 2001 and shall bear interest  
8 from their respective dates at a fixed rate of twelve percent  
9 (12%) per annum, and the Bonds being delivered to Rex Roof, as  
10 Original Purchaser, aggregating \$20,000 in principal amount,  
11 mature October 1, 1986 and shall bear interest from their  
12 respective dates at a fixed rate of twelve percent (12%) per  
13 annum as set forth in the following table. Interest on the  
14 Bonds shall be payable semiannually on April 1 and October 1 of  
15 each year, beginning April 1, 1982. Upon any transfer and  
16 surrender of the Bond in accordance with the provisions of the  
17 Indenture, the Issuer shall execute and deliver a new Bond in  
18 exchange therefor as provided in the Indenture.

19 Bonds maturing October 1, 2001, are subject to  
20 mandatory sinking fund redemption, by lot, without action by  
21 the Issuer, on October 1, 1982, and on each October 1 thereafter  
22 to and including October 1, 2000, in the principal amount of  
23 \$45,000 each year, at 100% of such principal amount, plus accrued  
24 interest to the redemption date.

25 The Bonds maturing October 1, 2001 are also subject to  
26 original redemption, in whole or in part by lot, prior to  
27 maturity by the Issuer at the direction of the Company on  
28 October 1, 1991, or on any Interest Payment Date thereafter, in  
29 the event of exercise by the Company of its option to prepay  
30 the Note in full or in part as provided by the first paragraph  
31 of Section 6.1 of the Loan Agreement at the redemption prices  
32 (expressed as percentages of the principal amounts thereof) set



forth below, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for prepayment of the Note in accordance with the provisions of such paragraph:

<u>Year</u>	<u>Principal Amount Due</u>	<u>Interest Rate(s)</u>	<u>Optional Redemption Price Commencing October 1</u>
1986	\$20,000	12%	
1991			106%
1992			105-1/2%
1993			105%
1994			104-1/2%
1995			104%
1996			103-1/2%
1997			103%
1998			102-1/2%
1999			102%
2000			101-1/2%
2001	900,000	12%	

The Bonds are also subject to optional redemption, in whole or in part, by lot, in the event of the exercise by the Company of its options to prepay the Note in whole or in part as provided by the fifth paragraph of Section 6.1 of the Loan Agreement, at a redemption price of 100% of principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date.

The Bonds shall also be callable for redemption in whole or in part by lot, upon occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Section 6.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company, (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due

1 to a Determination of Taxability, the redemption price shall be  
2 increased by an amount equal to the difference between (a) (i)  
3 the aggregate amount of interest which would have been payable  
4 on the Bonds if the interest rate on the Bonds, commencing on  
5 the date of the Event of Taxability, had been the Taxable Rate  
6 of Interest, plus (ii) any penalties and interest payable by  
7 the Holders to any taxing authority as a result of the loss of  
8 the tax-exempt status of interest on the Bonds, plus (iii)  
9 all attorneys fees and other costs incurred by the Holders in  
10 contesting or resisting the loss of the tax-exempt status of  
11 interest on the Bonds, and (b) the aggregate amount of interest  
12 actually paid on the Bonds to the redemption date.

13 The obligation of the Issuer to make monthly payments  
14 of principal and interest on the principal amount of the Bonds  
15 which remains outstanding after any partial redemption shall  
16 not be affected by such partial redemption, such partial  
17 redemption operating instead to pay and redeem the principal of  
18 the Bonds at dates earlier than the originally scheduled  
19 principal amortization dates, in inverse chronological order.

20 Notice from the Company to the Trustee that the Note  
21 is to be prepaid in whole or in part pursuant to the Agreement  
22 shall constitute the direction of the Issuer to the Trustee to  
23 call some or all, as the case may be, of the then outstanding  
24 Bonds, and no separate notice from the Issuer to the Trustee  
25 shall be required.

26 When less than the entire unmatured portion of the  
27 Bonds shall be called for redemption at any time or from time  
28 to time (otherwise than pursuant to any mandatory sinking fund  
29 redemption provisions hereof) the selection of such Bonds or  
30 portions of fully registered Bonds to be called shall be made  
31 by lot by the Trustee in such manner as the Trustee may  
32 determine. When Bonds shall be called for redemption pursuant

1 to mandatory sinking fund redemption provisions hereof, they  
2 shall be called by lot. If optional redemption of Bonds is to  
3 take place in any of the years 1991 to 2001, both inclusive,  
4 the Bonds to be so redeemed by optional redemption shall be  
5 selected prior to the selection of the Bonds to be redeemed on  
6 the same date by operation of the mandatory redemption  
7 provisions hereof.

8 Notice of the call for any redemption of Bonds,  
9 identifying by designation, letters, numbers, or other  
10 distinguishing marks, the Bonds (in amounts of \$5,000 or any  
11 multiple thereof) or portions of fully registered Bonds to be  
12 redeemed, the redemption price to be paid, the date fixed for  
13 redemption and the place or places where the amounts due upon  
14 such redemption are payable, shall be given by the Trustee on  
15 behalf of the Issuer by at least two publications in a  
16 newspaper or financial journal of general circulation published  
17 in the City and State of New York, the first such publication  
18 to be not less than thirty days prior to the redemption date,  
19 and, in the case of the redemption of Bonds at the time in the  
20 form of registered Bonds, by mailing a copy of the redemption  
21 notice by first class mail at least thirty days prior to the  
22 date fixed for redemption to the registered owner of each such  
23 registered Bond to be redeemed at the address shown on the  
24 registration books kept by the Trustee; provided, however, that  
25 failure to give such notice by mailing, or any defect in such  
26 notice, shall not affect the validity of any proceedings for  
27 the redemption of the Bonds. If, because of the temporary or  
28 permanent suspension of the publication or general circulation  
29 of the appropriate newspapers or financial journals or for any  
30 other reason, it is impossible or impractical to publish such  
31 notice of call for redemption in the manner herein provided,  
32 then such publication in lieu thereof as shall be made with the  
approval of the Trustee shall constitute a sufficient

1 publication of notice. If all of the Bonds to be redeemed are  
2 at the time in the form of registered Bonds, notice of the call  
3 for redemption may be given by mailing a copy of the redemption  
4 notice by registered or certified mail at least thirty days  
5 prior to the date fixed for redemption to the holder or holders  
6 thereof at the address shown on the registration books kept by  
7 the Trustee and newspaper or financial journal publication of  
8 the notice of the call for redemption need not be given;  
9 provided, however, that failure to give such notice to any  
10 Bondholder by mailing, or any defects in such notice to any  
11 Bondholder, shall not affect the validity of the proceedings  
12 for the redemption of any of the other Bonds. The holder or  
13 holders of Bonds may waive any notice of redemption in writing,  
14 and in such event, no notice of any kind need be given with  
15 respect to the Bonds of such holder or holders to be so redeemed.

16 Bond Service Charges on Bonds in coupon form, other  
17 than principal of or any redemption premium on such Bonds  
18 registered as to principal (except to bearer), shall be payable,  
19 without deduction for services as paying agent, at the  
20 corporate trust office of the Trustee.

21 All Bond Service Charges on registered Bonds shall be  
22 payable by check or draft drawn upon the Trustee and mailed or  
23 delivered to the Bondholder at its address as shown on the Bond  
24 registration books to be kept by the Trustee; provided however  
25 that the final Bond Service Charges shall be payable at the  
26 corporate trust office of the Trustee upon presentation and  
27 surrender of the Bond at such office. All payments of Bond  
28 Service Charges shall be made in lawful money of the United  
29 States of America, without deduction for services as paying  
30 agent. If any Bond Service Charges are not paid when due, the  
31 Issuer shall also pay to the Trustee, for distribution to the  
32 Bondholder, a "late charge" equal to 4% of such Bond Service

1 Charges to cover the extra expenses involved in handling  
2 delinquent payments. In addition, upon acceleration of the  
3 Bond, the amounts payable upon such acceleration, together with  
4 interest thereon at the Interest Rate for Advances from the  
5 date of acceleration, shall continue as an obligation of the  
6 Issuer until paid. All payments from the Issuer referred to  
7 herein shall be payable solely from the Pledged Receipts.

8 All Bonds shall bear such designation as may be  
9 necessary to distinguish them from Bonds of any other series.  
10 Subject to provisions of the Bond Legislation, Bonds shall be  
11 issued as coupon Bonds registrable as to principal or as fully  
12 registered Bonds, and may be exchanged as between forms, all as  
13 provided in the Indenture. All Bonds shall be negotiable  
14 instruments, subject to applicable provisions for registration,  
15 and shall express on their faces the purpose for which they are  
16 issued and such other statements or legends as may be required  
17 by law.

18 If Bonds or portions of fully registered Bonds are  
19 duly called for redemption and if on such redemption date  
20 moneys for the redemption of all the Bonds to be redeemed,  
21 together with accrued interest to the redemption date, shall be  
22 held by the Trustee so as to be available therefore, then from  
23 and after such redemption date such Bonds or portions of fully  
24 registered Bonds shall cease to bear interest and any coupons  
25 for interest thereon maturing subsequent to the redemption date  
26 shall be void.

27 The Bonds shall be executed on behalf of the Issuer by  
28 the Executive and by the Fiscal Officer, provided that any or  
29 all of such signatures may be facsimiles, and the seal of the  
30 Issuer shall be impressed thereon or a facsimile of such seal  
31 placed thereon. In case any officer whose signature or a  
32 facsimile thereof shall appear on any Bond, shall cease to be

1 such officer before the issuance, authentication or delivery of  
2 the Bond, such signature or facsimile thereof shall nevertheless  
3 be valid and sufficient for all purposes, the same as if he had  
4 remained in office until after that time.

5 Section 5. Security for the Bonds. As provided  
6 herein, the Bonds shall be payable solely from the Bond Fund  
7 and the Pledged Receipts and secured by a pledge of and lien on  
8 the Pledged Receipts and the Bond Fund, and shall be further  
9 secured by the Mortgage, the Guaranty Agreement (as defined in  
10 the Loan Agreement) and the Indenture. Neither the Bond  
11 Legislation, the Bonds, the Indenture, the Loan Agreement, nor  
12 the Bond Purchase Agreement shall represent or constitute a  
13 debt or pledge of the faith and credit or the taxing power of  
14 the Issuer, and each Bond shall contain on the face thereof a  
15 statement to that effect.

16 Section 6. Sale of Bonds. The Bonds are hereby sold  
17 and awarded to each Original Purchaser, in accordance with its  
18 offer therefor in the Bond Purchase Agreement, at a purchase  
19 price of 100% of the principal amount of the Bonds to be  
20 purchased by it, aggregating \$920,000, plus accrued interest  
21 from the date of the Bonds. The Executive and the Fiscal  
22 Officer are authorized and directed to make on behalf of the  
23 Issuer the necessary arrangements with each Original Purchaser  
24 to establish the date, location, procedure and conditions for  
25 the delivery of the Bonds to such Original Purchaser, and to  
26 take all steps necessary to effect due execution, authentication  
27 and delivery to each Original Purchaser of the Bonds purchased  
28 by it under the terms of this Bond Legislation, the Indenture  
29 and the Bond Purchase Agreement. It is hereby determined that  
30 the price for and the terms of the Bonds, and the sale thereof,  
31 all as provided in this Bond Legislation and the Bond Purchase  
32 Agreement, are in the best interest of the Issuer and consistent

1 with all legal requirements.

2 Section 7. Allocation of Proceeds of Bond -

3 Construction Fund. There is hereby created by the Issuer and  
4 ordered maintained, as a separate deposit account (except when  
5 invested as hereinafter provided) in the custody of the  
6 Trustee, a trust fund in the name of the Issuer to be  
7 designated "City of Fort Wayne - Allen County Aggregates, Inc.  
8 Construction Fund". All of the sums from the sale of the  
9 Bonds, except accrued interest on the Bonds, shall be deposited  
10 in the Construction Fund and disbursed by the Trustee in  
11 accordance with the Loan Agreement. The Trustee is authorized  
12 and directed to issue its check for each such disbursement.  
13 The moneys to the credit of the Construction Fund (including  
14 the proceeds from the sale of investments thereof) shall, pending  
15 applications thereof as above set forth, be subject to a lien  
16 and charge in favor of the Holder.

17 Section 8. Source of Payment - Bond Fund. As

18 provided in the Agreement, Note Payments, sufficient in time  
19 and amount to pay the Bond Service Charges as they come due,  
20 are to be paid by the Company directly to the Trustee for the  
21 account of the Issuer and deposited in the Bond Fund.

22 There is hereby created by the Issuer and ordered  
23 maintained, as a separate deposit account (except when invested  
24 as hereinafter provided) in the custody of the Trustee, a trust  
25 fund to be designated "City of Fort Wayne - Allen County  
26 Aggregates, Inc. Bond Fund". There is also hereby created two  
27 separate subaccounts in the Bond Fund, to be designated the  
28 "Principal Account" and the "Interest Account". Subject to the  
29 provisions of the Mortgage, the Bond Fund and the moneys  
30 therein are hereby pledged to and shall be used solely and  
31 exclusively for the payment of Bond Service Charges as they  
32 fall due at stated maturity or by amortization or redemption,

1 all as provided herein and in the Indenture and the Agreement,  
2 with Bond Service Charges representing repayment of principal  
3 on the Bonds, whether at maturity, or by mandatory or optional  
4 redemption, being paid only from the Principal Account and with  
5 Bond Service Charges representing all other amounts being paid  
6 only from the Interest Account, except as provided in Section  
7 8.02 of the Trust Indenture relating to defeasance of the Bonds.

8         Except as otherwise provided in this Bond Legislation  
9 or in the Mortgage, and except for payments to be deposited  
10 into the Reserve Fund, there shall be deposited into the Bond  
11 Fund, as and when received, all Pledged Receipts, as follows:  
12 All portions of the Note Payments representing a payment of  
13 principal on the outstanding balance of the Note, all moneys  
14 from the Reserve Fund or investment of Reserve Fund moneys  
15 transferred from the Reserve Fund or otherwise credited to the  
16 Bond Fund and any other payments received by the Trustee to be  
17 used to repay principal on the Bonds, shall be deposited into  
18 the Principal Account, and all other Pledged Receipts shall be  
19 deposited into the Interest Account.

20         The Issuer covenants and agrees that, until Payment in  
21 Full of the Bonds, it will deposit or cause to be deposited in  
22 the Bond Fund Pledged Receipts sufficient in time and amount to  
23 pay the Bond Service Charges as the same become due and  
24 payable, and to this end the Issuer covenants and agrees that  
25 it will diligently and promptly proceed in good faith and use  
26 its best efforts to enforce the Agreement and that, should  
27 there be an event of default under the Agreement, the Issuer  
28 shall fully cooperate with the Trustee and with the Bondholder  
29 to fully protect the rights and security of the Bondholder  
30 hereunder. Nothing herein shall be construed as requiring the  
31 Issuer to use or apply to the payment of Bond Service Charges  
32 any funds other than the Bond Fund and the Construction Fund or



1 revenues from any source other than Pledged Receipts.

2 The Issuer covenants and agrees, whenever the moneys  
3 and investments in the Bond Fund (or otherwise held by the  
4 Trustee for such purpose) are sufficient in amount to redeem  
5 the entire principal amount of the Bonds then outstanding and  
6 to pay interest to accrue thereon to the date or dates of such  
7 redemption, and any applicable premiums, to take and cause to  
8 be taken, upon notification by the Company or the Trustee, the  
9 necessary steps to redeem the Bonds on the next succeeding  
10 redemption date or dates for which the required notice of call  
11 for redemption may be given.

12 Section 8(a). Reserve Fund. There is hereby created  
13 by the Issuer and ordered maintained, as a separate deposit  
14 account (except when invested as hereinafter provided) in the  
15 custody of the Trustee, a trust fund to be designated "City of  
16 Fort Wayne - Allen County Aggregates, Inc. Reserve Fund"  
17 (hereinafter called the "Reserve Fund"). As provided in  
18 Section 4.1(d) of the Agreement, Reserve Fund Payments are to  
19 be paid by the Company directly to the Trustee for the account  
20 of the Issuer and deposited in the Reserve Fund. There shall  
21 be deposited or credited to the Reserve Fund from the Reserve  
22 Fund Payments and from all other sources, including from income  
23 earned on the investment of monies credited to such Reserve  
24 Fund, an amount equal to not more than \$138,000, which is 15%  
25 of the Original Principal Sum and the reserve reasonably  
26 required by the Original Purchaser. Until the principal amount  
27 of the Reserve Fund shall have totaled \$138,000, the Trustee  
28 shall invest the monies in such Reserve Fund as provided in  
29 Section 10 hereof and shall accumulate such income in the  
30 Reserve Fund and add such income to the principal thereof.  
31 When the amount of the Reserve Fund shall have aggregated  
32 \$138,000, the Trustee shall credit all further income received

1 from the investment thereof to the Principal Account of the  
2 Bond Fund to pay Bond Service Charges representing repayment of  
3 principal on the Bonds, whether at maturity, or by mandatory or  
4 optional redemption, to the fullest extent possible, on the  
5 next succeeding Interest Payment Date, Mandatory Redemption  
6 Date or maturity date.

7 If, on any Interest Payment Date, the balance in the  
8 Bond Fund is insufficient to pay the required Bond Service  
9 Charges, then the Trustee shall immediately transfer from the  
10 Reserve Fund to the Bond Fund an amount sufficient to make up  
11 such deficiency in the Bond Fund. With the approval of the  
12 Company, which approval shall not be unreasonably withheld, the  
13 Trustee may also make withdrawals from the Reserve Fund to pay  
14 the fees and expenses of the Trustee. After any such transfer  
15 as aforesaid, the Trustee may again receive and credit Reserve  
16 Fund Payments to the Reserve Fund until the amount thereof  
17 shall again total \$138,000.

18 Section 9. Covenants of Issuer. In addition to other  
19 covenants of the Issuer in the Bond Legislation and the  
20 Indenture, the Issuer further covenants and agrees as follows:

21 (a) Payment of Bond Service Charges. The Issuer  
22 will, solely from the sources herein provided, pay or cause  
23 to be paid the Bond Service Charges on the Bonds on the  
24 dates, at the places and in the manner provided herein and  
25 in the Bonds.

26 (b) Performance of Covenants, Authority and Actions.  
27 The Issuer will at all times faithfully observe and perform  
28 all agreements, covenants, undertakings, stipulations and  
29 provisions contained in the Bond Legislation, the Agreement,  
30 Bond Purchase Agreement, the Indenture and the Bonds, and  
31 required therein to be observed and performed by the Issuer.  
32 The Issuer warrants and covenants that it is, and upon delivery

1 of the Bonds will be, duly authorized by the Constitution and  
2 laws of the State, including particularly and without limitation  
3 the Act, to issue the Bonds, to execute the Indenture, the Bond  
4 Purchase Agreement, the Agreement and the assignment of the Note,  
5 and to provide the security for payment of the Bond Service  
6 Charges in the manner and to the extent herein and in the  
7 Indenture set forth; that all actions on its part for the  
8 issuance of the Bonds, and the execution and delivery of the  
9 Indenture, the Bond Purchase Agreement, the Agreement and the  
10 assignment of the Note, have been or will be duly and effectively  
11 taken; and that the Bonds will be valid, binding and enforceable  
12 special obligations of the Issuer according to the terms thereof.  
13 Each provision of the Bond Legislation, Indenture, the Bond  
14 Purchase Agreement, the Agreement and the Bonds is binding upon  
15 each such officer of the Issuer as may from time to time have the  
16 authority under law to take such actions as may be necessary to  
17 perform all or any part of the duties required by such provision.

18 (c) Pledged Receipts. Except as otherwise provided  
19 in the Bond Legislation, Indenture, Bond Purchase Agreement  
20 and Agreement, the Issuer will not make any pledge or assignment  
21 of or create any lien or encumbrance upon the Construction Fund,  
22 the Bond Fund, the Reserve Fund or the Pledged Receipts, other  
23 than the pledge and assignment thereof under the Bond Legislation,  
24 Indenture and Agreement.

25 (d) Recordings and Filings. The Issuer will cooperate  
26 in causing all necessary financing statements, amendments thereto,  
27 continuation statements and instruments of similar character  
28 relating to the pledges and assignments made by the Issuer to  
29 secure the Bonds, to be recorded or filed in such manner and  
30 in such places as and to the extent required by law in order to  
31 fully preserve and protect the security of the Holder and the  
32 rights of the Trustee under the Indenture; and in pursuance

1       thereof the Company has covenanted to cause to be delivered  
2       to the Trustee certain opinions of counsel, all as set  
3       forth in Section 5.11 of the Agreement.

4               (e) Inspection of Project Books. All books and  
5       documents in the Issuer's possession relating to the Project  
6       or to the Pledged Receipts shall at all reasonable times be  
7       open to inspection by such employees, accountants or other  
8       agents of the Trustee as the Trustee may from time to time  
9       designate.

10              (f) Maintenance of Agreement. The Issuer shall do  
11       all things and take all actions on its part necessary to  
12       comply with the obligations, duties and responsibilities on  
13       the part of the Issuer under the Agreement, and will take  
14       all actions within its authority to maintain the Agreement  
15       in effect in accordance with the terms thereof and to  
16       enforce and protect the rights of the Issuer thereunder,  
17       including actions at law and in equity, as may be appropriate.

18              (g) List of Bondholders. To the extent that such  
19       information shall be made known to the Issuer under the terms  
20       of this paragraph, the Issuer will keep or arrange to have  
21       kept on file at the corporate trust office of the Trustee a  
22       list of names and addresses of the last known holders of Bonds  
23       payable to bearer. Any Bondholder may in a writing addressed  
24       to the Issuer or Trustee request that his name and address be  
25       placed on said list, which request shall include a statement  
26       of the principal amount of Bonds held by such holder and shall  
27       identify, by number and series designation, such Bonds. Neither  
28       the Issuer nor the Trustee shall be under any responsibility  
29       with regard to the accuracy of said list. At reasonable times  
30       and under reasonable regulations established by the Trustee,  
31       said list may be inspected and copied by the Company, or by the  
32       holders (or a designated representative thereof) of twenty-five

1 percent or more in principal amount of Bonds then outstanding,  
2 such holding and the authority of any such designated represen-  
3 tative to be evidenced to the satisfaction of the Trustee.

4 (h) Rights under Agreement. The Trustee, in its name  
5 or in the name of the Issuer, may, for and on behalf of the  
6 Bondholder, enforce all rights of the Issuer and all obligations  
7 of the Company under and pursuant to the Agreement, whether or  
8 not the Issuer is in default of the pursuit or enforcement of  
9 such rights and obligations.

10 (i) Arbitrage Provisions. The Issuer will restrict  
11 the use of the proceeds of the Bonds in such manner and to  
12 such extent, if any, as may be necessary, after taking into  
13 account reasonable expectations at the time the Bonds are  
14 delivered to the Original Purchaser, so that they will not  
15 constitute arbitrage bonds under Section 103(c) of the Code  
16 and the applicable regulations prescribed under that section.  
17 The Fiscal Officer or any other officer having responsibility  
18 with respect to the issuance of the Bonds is authorized and  
19 directed, alone or in conjunction with any of the foregoing  
20 or with any other officer, employee, consultant or agent of  
21 the Issuer, or any officer of the Company, and upon receipt of  
22 satisfactory indemnities from the Company, to give an appropriate  
23 certificate on behalf of the Issuer, for inclusion in the  
24 transcript of proceedings for the Bonds, setting forth the facts,  
25 estimates and circumstances and reasonable expectations pertaining  
26 to such Section 103(c) and regulations thereunder.

27 Section 10. Investment of Bond Fund, Construction  
28 Fund and Reserve Fund Money. Moneys in the Bond Fund, the  
29 Reserve Fund and the Construction Fund shall be invested and  
30 reinvested by the Trustee in any Eligible Investments, in  
31 accordance with and subject to any written orders, or oral  
32 orders confirmed promptly in writing, of the Authorized Company

1 Representative with respect thereto, provided that investments  
2 of moneys in the Bond Fund shall mature or be redeemable at the  
3 option of the Trustee at the times and in the amounts necessary  
4 to provide moneys hereunder to pay Bond Service Charges as they  
5 fall due at stated maturity or by amortization or redemption,  
6 and that each investment of moneys in the Construction Fund  
7 shall in any event mature or be redeemable at the option of the  
8 Trustee at such time as may be necessary to make timely payments  
9 from such Fund. Subject to any such orders with respect thereto,  
10 the Trustee may from time to time sell such investments and  
11 reinvest the proceeds therefrom in Eligible Investments maturing  
12 or redeemable as aforesaid. Any such investments may be  
13 purchased from the Trustee. The Trustee shall sell or redeem  
14 investments standing to the credit of the Bond Fund to produce  
15 sufficient moneys hereunder at the times required for the  
16 purposes of paying Bond Service Charges when due as aforesaid.  
17 An investment made from moneys credited to the Bond Fund, the  
18 Reserve Fund or Construction Fund shall constitute part of that  
19 respective Fund and such respective Fund shall be credited with  
20 all proceeds of sale and income or loss from such investment,  
21 provided further that all investments of any moneys credited to  
22 the Principal Account or Interest Account of the Bond Fund shall  
23 constitute part of that respective Account, and such respective  
24 Account shall be credited with all proceeds of sale and income  
25 or loss from such investment, subject to the restrictions set  
26 forth in Section 8(a) hereof with respect to the Reserve Fund.  
27 The Company has covenanted in the Agreement to restrict the use  
28 of the proceeds of the Bonds so that they will not constitute  
29 arbitrage bonds under the Code.

30 Section 11. Authorization of Agreement, Bond Purchase  
31 Agreement, Indenture and Assignment. In order to better secure  
32 the payment of the Bond Service Charges as the same shall

1 become due and payable, the Executive and the Fiscal Officer  
2 are hereby authorized and directed to execute, acknowledge and  
3 deliver, on behalf of the Issuer, the Agreement, the Bond  
4 Purchase Agreement, the Indenture and the assignment of the  
5 Note, in substantially the forms submitted to this Issuing  
6 Authority, which are hereby approved, with such changes therein  
7 not inconsistent with this Bond Legislation and not substantially  
8 adverse to the Issuer as may be permitted by the Act and approved  
9 by the Legal Officer and by the persons executing the same.  
10 The approval of such changes by the Legal Officer and such  
11 members, and that such are not substantially adverse to the  
12 Issuer, shall be conclusively evidenced by the execution of  
13 the Agreement, the Bond Purchase Agreement, the Indenture and  
14 such assignment by such persons.


15           The Executive and Fiscal Officer and the Clerk of the  
16 Issuer are each hereby separately authorized to take any and  
17 all actions and to execute such financing statements, election  
18 statement, certificates and other instruments that may be  
19 necessary or appropriate in the opinion of the Legal Officer  
20 and bond counsel, in order to effect the issuance of the Bond  
21 and the intent of this Bond Legislation. The Clerk of the  
22 Issuer, or other appropriate officer of the Issuer, shall  
23 certify a true transcript of all proceedings had with respect  
24 to the issuance of the Bonds, along with such information from  
25 the records of the Issuer as is necessary to determine the  
26 regularity and validity of the issuance of the Bonds.

27           This Bond Legislation shall constitute a part of the  
28 Indenture as therein provided and for all purposes of the  
29 Indenture, including, without limitation, application to this  
30 Bond Legislation of the provisions in the Indenture relating to  
31 amendment, modification and supplementation, and provisions for  
32 severability.

1                    Section 12. Effective Date. This Bond Legislation  
2 shall take effect and be in force immediately upon its adoption.

3  
4                      
5                    COUNCIL MEMBER

6 APPROVED AS TO FORM AND  
7 LEGALITY.

8  
9                      
10                    John J. Weenhet, Attorney for the  
11                    Economic Development Commission  
12                    Dated this 21<sup>st</sup> day of September, 1981.



Read the first time in full and on motion by V. Admick, seconded by Mr. Burns, and duly adopted, read the second time by title and referred to the Committee Finance (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on 9-22-81, the 22 day of September, 1981, at 7 o'clock P.M., E.S.T.

DATE: 9-22-81

Charles W. Westerman  
CHARLES W. WESTERMAN  
CITY CLERK

Read the third time in full and on motion by V. Admick, seconded by Mr. Burns, and duly adopted, placed on its passage. PASSED (YEAS) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>BURNS</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>EISEBART</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>GIAQUINTA</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>NUCKOLS</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>SCHMIDT, D.</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>SCHMIDT, V.</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>SCHOMBURG</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>STIER</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>
<u>TALARICO</u>	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>	<u>      </u>

DATE: 10-12-81

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) No. S-217-81 on the 12th day of October, 1981.

ATTEST:

(SEAL)

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

John Nuckols  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of October, 1981, at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 14th day of Oct. 1981, at the hour of 11 o'clock A.M., E.S.T.

Winfield C. Moses, Jr.  
WINFIELD C. MOSES, JR.  
MAYOR

BILL NO. S-81-09-16

REPORT OF THE COMMITTEE ON FINANCE

WE, YOUR COMMITTEE ON Finance TO WHOM WAS REFERRED AN  
ORDINANCE AUTHORIZING THE ISSUANCE OF \$920,000 AGGREGATE PRINCIPAL AMOUNT OF  
ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS (ALLEN COUNTY AGGREGATES, INC.  
PROJECT) OF THE CITY OF FORT WYANE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO  
ALLEN COUNTY AGGREGATES, INC. TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT  
FACILITY: PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS: AUTHORIZING  
A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE  
FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS:  
AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

VIVIAN G. SCHMIDT, CHAIRMAN

*Vivian G. Schmidt*

JAMES S. STIER, VICE CHAIRMAN

*James S. Stier*

MARK E. GIAQUINTA

*Mark E. Giaquinta*

PAUL M. BURNS

*Paul M. Burns*

ROY J. SCHOMBURG

*Roy J. Schomburg*

10-13-81

CONCURRED IN

DATE

CHARLES W. WESTERMAN, CITY CLERK



# The City of Fort Wayne

ECONOMIC DEVELOPMENT COMMISSION

September 21, 1981

Common Council of the  
City of Fort Wayne  
City-County Building  
One Main Street  
Fort Wayne, Indiana 46802

Re: City of Fort Wayne, Indiana  
Economic Development First Mortgage  
Revenue Bonds, Series 1981 A  
(ALLEN COUNTY AGGREGATES, INC. PROJECT)

Gentlemen and Mrs. Schmidt:

Pursuant to the provisions of I.C. 36-7-12-24, there are enclosed copies of the following:


1. Resolution containing a report on the proposed financing of economic development facilities, which report has been submitted to the President of the Fort Wayne Plan Commission having jurisdiction where the facilities are to be located, together with the minutes of the July 16, 1981 meeting of the Fort Wayne Economic Development Commission evidencing adoption of such resolution.
2. Resolution approving the proposed financing and approving the form and terms of Economic Development Revenue Bonds, Bond Purchase Agreement, Mortgage and Security Agreement, Trust Indenture, Loan Agreement, Guaranty Agreement, and Bond forms, together with the minutes of the September 17, 1981 meeting of the Fort Wayne Economic Development Commission evidencing a public hearing on the proposed financing of such economic development facilities and adoption of such resolution.
3. Each of the financing documents referred to in the preceding paragraph.

Common Council of the City of Fort Wayne  
September 21, 1981  
Page Two

The Fort Wayne Economic Development Commission requests that you consider these enclosures and the proposed financing contemplated thereby, and take such additional action as is necessary to complete such financing.

ECONOMIC DEVELOPMENT COMMISSION

BY:

  
\_\_\_\_\_  
Timothy S. Borne  
Its Secretary

cc: Ms. Debbie Shell  
Allen County Aggregates, Inc.



Jack G. Suter • executive director • 219-423-7096  
allen county plan commission • 630 city-county building • one main street • fort wayne, indiano • 46802

July 28, 1981

Ms. Debbie Shell  
EDC Coordinator  
800 City-County Building  
One Main Street  
Fort Wayne, Indiana 46802

Dear Ms. Shell:

We have reviewed the application of Allen County Aggregates, Inc., for revenue bond financing and submit the following information relating to zoning matters:

The real estate contained in the application is zoned both A-3 (Estates) and A-2 (Flood Protection). IC-18-7-4-1103, limits the authority of local zoning ordinances to regulate extraction of mineral resources in urban areas as defined in the aforementioned statute.

A limited portion, if any, may be within an urban area. In the event a portion of the property was determined to be within an urban area, the Allen County Board of Zoning Appeals could, upon application, grant a special exception for extraction of mineral resources. On two occasions the Board of Zoning Appeals has granted special exceptions for certain land uses within the site. Special Exception No. 297, authorized a ready-mix concrete plant at the site of the active quarry. Special Exception No. 604 allowed an asphalt plant. Both matters were the subject of litigation and at this time, a final determination has not been made on the latter, (S.C 79-2345).

In the event further information is needed, please advise the undersigned.

Cordially,

A handwritten signature in dark ink, appearing to read 'Jack G. Suter', is written over a horizontal line.

Jack G. Suter

JGS:LW

RESOLUTION

FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION  
FORT WAYNE, INDIANA

BE IT RESOLVED BY THE FORT WAYNE ECONOMIC DEVELOPMENT  
COMMISSION THAT:

Section 1. It finds that the proposed financing of economic development facilities presented to this meeting for the Allen County Aggregates, Inc. Project in an amount not to exceed the sum of \$920,000.00 for the acquisition of a 221 acre site located at 7400 Lower Huntington Road, Aboite Township, outside the City of Fort Wayne, including buildings, improvements, existing machinery and equipment, repairs to existing machinery and new machinery, complies with the purposes and provisions of I.C. 18-6-4.5 as recodified and amended at I.C. 36-7-12 will be of benefit to the health and welfare of the City of Fort Wayne, Indiana, and its citizens.

Section 2. The substantially final forms of Bond Purchase Agreement, Mortgage and Security Agreement, Trust Indenture, Loan Agreement, and Guaranty Agreement and Series 1981 Bonds, and a proposed form of Ordinance for the Common Council presented to this meeting are hereby approved, with such changes therein not inconsistent with the Resolution and the Ordinance and not substantially adverse to the City of Fort Wayne, Indiana, as may be permitted by I.C. 18-6-4.5 as recodified and amended at I.C. 36-7-12 and approved by the attorney for the Fort Wayne Economic Development

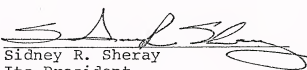
Commission or the City Attorney and by the persons executing the same.

Section 3. The proposed economic development facilities will not have an adverse competitive effect on any similar facilities already under construction or in operation in the City of Fort Wayne, Indiana.


Section 4. A copy of this Resolution shall be presented to the Common Council.

ADOPTED this 17th day of September, 1981.

FORT WAYNE ECONOMIC DEVELOPMENT  
COMMISSION

BY:   
Sidney R. Sheray  
Its President

ATTEST:

  
\_\_\_\_\_  
Timothy Borne  
Its Secretary

MINUTES  
FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION

September 17, 1981

A meeting of the Fort Wayne Economic Development Commission was held on September 17, 1981 at 11:00 a.m., in Room 128 of the City-County Building.

Commission members present were: Timothy Borne, Charles Henry, Phil Howard and Sid Sheray. Mr. Stan Lipp was absent.

Commission President Sid Sheray called the meeting to order.

The minutes of the September 3, 1981 Economic Development Commission meeting were approved on motion by Mr. Borne and second by Mr. Henry.

The first application discussed was PRT Corporation. Attorney William Hopkins spoke on behalf of the applicant. Legal notice of the public hearing was duly published in the Fort Wayne Journal Gazette and News Sentinel on September 7, 1981. The final forms and documents for the bond issue had been reviewed by Commission Attorney John Wernet. He reported that all papers were in order. Lincoln National Bank and Trust Company will purchase the \$1,600,000 issue at the rate of 70% of the prime interest rate for the first five years and 75% of prime interest rate for the second five years. No one spoke in opposition to the project. Upon motion by Mr. Borne and second by Mr. Howard, the project was unanimously approved.

The next application discussed was Allen County Aggregates, Inc. Attorney Richard Fox spoke on behalf of the project. Legal notice of the public hearing was duly published in the Fort Wayne Journal Gazette and the Fort Wayne News Sentinel on September 7, 1981. The final forms and documents for the bond issue had been reviewed by Commission Attorney John Wernet. He reported that all papers were in order. The issue will be for \$920,000. Indiana Bank and Trust will purchase \$900,000 of the issue at 12% interest for a term of twenty years. A private investor will be purchasing \$20,000 of the issue for a term of five years. Upon motion by Mr. Borne and second by Mr. Howard, the final financing for the project was unanimously approved.

The next item on the agenda was the application of Chi Chi's, Inc. Legal notice of the public hearing was duly published in the Fort Wayne Journal Gazette and News Sentinel on September 7, 1981. Attorney John Walda and Mr. Jeff Anderson spoke on behalf of the applicant. The proposed project will consist of a 10,500 square foot mexican style restaurant. It will create 175 new jobs, all of which will be hired locally.

Mr. Sheray asked if anyone opposing the project was present. No one spoke in opposition to the project.

The discussion of the project was continued to a reconvened regular meeting on September 21, 1981 at 11:00 a.m., in Room 128 of the City-County Building. The applicant was requested to present letters of commitment from bond purchasers at



Minutes  
Page 2  
September 17, 1981

that time. Mr. Liop will be notified by both telephone and in writing of the reconvened meeting.

The last item on the agenda was a presentation by Ms. Jane Strother. A research project had been conducted by the Institute of Local Government Finance for the Economic Development Commission. Following her presentation, the members thanked Ms. Strother for her efforts.

There being no further business to come before the Commission, the meeting was adjourned.

---

Timothy Borne, Secretary

INDUCEMENT RESOLUTION OF  
FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION  
ON APPLICATION OF  
ALLEN COUNTY AGGREGATES, INC.

WHEREAS, the City of Fort Wayne, Indiana, (the "Issuer") is authorized by Indiana Code §18-6-4.5 (the "Act") to issue revenue bonds for the financing of economic development facilities, the funds from said financing to be used for the acquisition, construction and equipping of said facilities, and said facilities to be either sold or leased to the user or developer; and

WHEREAS, Allen County Aggregates, Inc. (the "Applicant"), has advised the Fort Wayne Economic Development Commission (the "Commission") and the Issuer that it proposes that the Issuer acquire and equip an economic development facility and sell and/or lease the same to the Applicant or loan proceeds of an economic development financing to the Applicant for the same, said economic development facility to be a limestone quarry located at 7400 Lower Huntington Road, Fort Wayne, Indiana, including 221 acres, buildings, improvements, existing machinery and equipment, repairs to existing machinery and new machinery, located outside the City of Fort Wayne in Aboite Township, Allen County, Indiana (the "Project"); and

WHEREAS, the diversification of industry and increase in job opportunities to be achieved by the acquisition of the Project will be of public benefit to the health, safety and general welfare of the Issuer and its citizens; and

WHEREAS, it would appear that the financing of the Project would be of public benefit to the health, safety and general welfare

of the Issuer and its citizens or the citizens of Allen County, Indiana; and

WHEREAS, the acquisition and construction of the facility will not have an adverse competitive effect on any similar facility already constructed or operating in Allen County, Indiana.

NOW, THEREFORE, BE IT RESOLVED by the Commission as follows:

1. The Commission hereby finds and determines that the promotion of diversification of economic development and job opportunities in Fort Wayne, Indiana, is desirable to preserve the health, safety and general welfare of the citizens of the Issuer, and that it is in the public interest that the Commission and the Issuer take such action as they lawfully may to encourage economic development, diversification of industry and promotion of job opportunities in and near the Issuer.

2. The Commission hereby finds and determines that the issuance and sale of economic development revenue bonds in an amount of approximately \$1,100,000.00 of the Issuer under the Act for the acquisition, construction and equipping of the Project and the sale or leasing of the Project to the Applicant or the loan of the proceeds of the revenue bonds to the Applicant, will serve the public purposes referred to above, in accordance with the Act.

3. In order to induce the Applicant to proceed with the acquisition, construction and equipping of the Project, the Commission hereby finds and determines that (i) it will take or cause to be taken such actions pursuant to the Act as may be required to implement the aforesaid financing or as it may deem appropriate in pursuance thereof; provided that all of the foregoing shall be mutually acceptable to the Issuer and the Applicant; and (ii) it will adopt such resolutions and authorize the execution and delivery of such instruments and the taking of such action as may be necessary and advisable for the authorization, issuance and sale of said economic development revenue bonds.

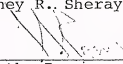
4. All costs of the Project which may be financed under the Act will be permitted to be included as part of the bond issue to finance the Project, and the Issuer will sell or lease the same to the Applicant or loan the proceeds from the sale of the bonds to the Applicant for the same purposes.

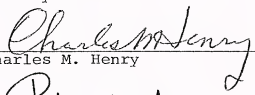
5. This Resolution shall expire 180 days after the date of its adoption unless the Applicant either requests the Commission to adopt a final resolution approving closing documents or requests an extension from the Commission, which extension shall be granted upon good cause being shown.

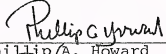
ADOPTED this 16 day of July, 1981.

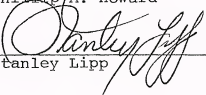
FORT WAYNE ECONOMIC DEVELOPMENT  
COMMISSION

  
\_\_\_\_\_  
Sidney R. Sheray

  
\_\_\_\_\_  
Timothy Borne

  
\_\_\_\_\_  
Charles M. Henry

  
\_\_\_\_\_  
Phillip A. Howard

  
\_\_\_\_\_  
Stanley Lipp

REPORT OF THE FORT WAYNE ECONOMIC DEVELOPMENT  
COMMISSION CONCERNING THE PROPOSED FINANCING  
OF ECONOMIC DEVELOPMENT FACILITIES FOR  
Allen County Aggregates, Inc.

Having been furnished certain data by the above applicant, and having had discussions with representatives of said applicant, the Fort Wayne Economic Development Commission now submits the following report pursuant to Indiana Code 18-6-4.5-16.

Description of Proposed Project

Acquisition and renovation of existing real estate, buildings, and other improvements, machinery and equipment located at 7400 Lower Huntington Road, Allen County, Indiana.

Estimate of Public Services Required

All public services, including water and sewage, now exist. No public facilities will be made necessary on account of the proposed facilities.

Total Project Cost

The total project cost for the purchase, construction and equipping of the facilities is estimated to be \$1,100,000, including costs of issuance of the economic development revenue bonds.

Number of Jobs and Estimated Payroll

It is anticipated there will be approximately 7 new jobs created by this project with an estimated payroll increase of approximately \$140,000 annually.

Adverse Competitive Effect

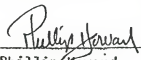
The construction of the facilities will not have an adverse competitive effect on any similar facilities already constructed or operating in or near Fort Wayne, Indiana.

Dated this 16th day of July, 1981.

  
Sidney R. Sheray

  
Charles Henry

  
Timothy Borne

  
Phillip Howard

  
Stanley Linn

MINUTES

FORT WAYNE ECONOMIC DEVELOPMENT COMMISSION

July 16, 1981

A meeting of the Fort Wayne Economic Development Commission was held at 11:00 a.m. in Room 128 of the City-County Building, Fort Wayne, Indiana, on July 16, 1981.

Commission members present were: Sidney Sheray, Timothy Borne, Phillip Howard, Charles Henry, and Stanley Lipp.

Commission President Sidney Sheray called the meeting to order.


Discussion of the Standard Building Partnership was continued to the August 6, 1981, Commission meeting.

Attorney Jim Koday appeared on behalf of TGI Friday's, Inc. He requested that the application be tabled until the August 6, 1981, Commission meeting. A complete presentation by the company will be made at that time. The request was granted.

Attorney Richard Fox and Mr. Paul Eickhoff spoke on behalf of Allen County Aggregates, Inc. Legal notice of the public hearing was duly published in the Fort Wayne Journal Gazette on July 11, 1981. Mr. Fox explained the proposed bond issue is to finance the acquisition of an existing stone quarry facility located at 7400 Lower Huntington Road. The total project cost is \$1,100,000. A commitment by the Cincinnati Insurance Company to purchase \$900,000 of the issue was presented. The remainder of the issue will be placed locally. Mr. Eickhoff did agree not to remonstrate a possible future annexation of the project area. No one spoke in opposition to the project. Mr. Henry moved that the Commission enter into an inducement resolution. Mr. Borne seconded the motion, which was passed unanimously.

The minutes of the Economic Development Commission meeting held on July 2, 1981, were duly approved.

There being no further business before the Commission, the meeting was adjourned.

  
\_\_\_\_\_  
Timothy Borne, Secretary



# The City of Fort Wayne

## Office of the Mayor

Mr. David A. Rogers  
Peck, Shaffer & Williams  
2200 First National Bank Center  
Cincinnati, Ohio 45202

Re: \$920,000 City of Fort Wayne, Indiana Economic Development First  
Mortgage Revenue Bonds (Allen County Aggregates Inc., Project).

Dear Mr. Rogers:

As per Mr. John Wernet's request, at the lower part of this page are the facimile signatures of the Mayor and Clerk of Fort Wayne and the City Seal. I understand these are to be printed on the bonds for the above-referenced project.

Kindly contact me at (219) 423-5104 if I may be of further assistance.

Sincerely,

Debbie J. Shell  
E.D.C. Coordinator

DJS/hjk

cc: Mayor Moses  
Charles Westerman, Clerk  
John Wernet

DIGEST SHEET

J-81-09-16

TITLE OF ORDINANCE Special Ordinance for an issue of \$920,000.00 of  
Economic Development First Mortgage Revenue Bonds.DEPARTMENT REQUESTING ORDINANCE Economic Development Commission

SYNOPSIS OF ORDINANCE An Ordinance authorizing the City of Fort Wayne  
to issue its Economic Development First Mortgage Revenue Bonds,  
(ALLEN COUNTY AGGREGATES, INC.), and approval of final financing  
documents. An Inducement Resolution for this Project was previously  
adopted by City Council.

\_\_\_\_\_

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\_\_\_\_\_

EFFECT OF PASSAGE Permanent Financing of the Facilities.EFFECT OF NON-PASSAGE None of the above.MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) None.

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_



DAR DRAFT: 1013b

1014b

9/15/81

LOAN AGREEMENT

Between

CITY OF FORT WAYNE, INDIANA

And

ALLEN COUNTY AGGREGATES, INC.

\*\*\*\*\*

RELATING TO  
\$920,000

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS  
(ALLEN COUNTY AGGREGATES, INC. PROJECT)

\*\*\*\*\*

DATED AS OF  
OCTOBER 1, 1981

THE INTEREST OF THE CITY OF FORT WAYNE, INDIANA IN THIS  
LOAN AGREEMENT HAS BEEN ASSIGNED TO INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE, AS TRUSTEE, WITHOUT RECOURSE TO SUCH  
CITY

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## LOAN AGREEMENT

This Loan Agreement (as the same may be amended or supplemented, the "Agreement"), is made as of October 1, 1981, between the CITY OF FORT WAYNE, INDIANA, a municipal corporation and political subdivision of the State of Indiana (the "Issuer"), and ALLEN COUNTY AGGREGATES, INC., an Indiana corporation (the "Company"), under the following circumstances:

A. The Indiana Code, Title 18, Article 6, Chapter 4.5 (the "Act"), has been enacted by the Legislature of Indiana.

B. The Act provides that an issuer may pursuant to the Act issue revenue bonds and loan the proceeds thereof to a developer or user for the purpose of financing all costs of purchase or construction of facilities, including real and personal property, for diversification of economic development and promotion of job opportunities in or near such issuer, such revenue bonds being payable primarily from the revenues derived from the repayment of such loan.

C. Pursuant to and in accordance with the provisions of the Act, by ordinance or ordinances of the common council of the Issuer (the "Issuing Authority"), in furtherance of the purposes of the Act, Issuer proposes to make a loan to Company for the purpose of acquisition, construction, installation and equipping of economic development facilities under construction or to be constructed in the City of Fort Wayne, Indiana consisting of certain economic development facilities which constitute the Project which is the subject of this Agreement.

D. The Issuing Authority has found and determined, and does hereby find and determine, that the acquisition, construction and installation of the Project by the Company will promote the health, prosperity, stability and general welfare of the people of the Issuer, provide employment opportunities, and assist in the development of industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the acquisition, construction and installation of the Project, will be acting in a manner consistent with and in furtherance of the provisions of the Act.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto covenant, agree and bind themselves as follows (provided that any obligation of the Issuer created by or arising out of this Agreement shall not be a general debt on its part but shall be payable solely out of Pledged Receipts, as defined herein):

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions. In addition to the words and terms defined in the recitals and elsewhere in this Agreement, the words and terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, except as otherwise expressly provided or unless the context otherwise requires. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings set forth in the Bond Legislation, as defined herein.

"Act" means the Indiana Code, Title 18, Article 6, Chapter 4.5, and amendments and supplements thereto such as may be hereafter adopted.

"Additional Payments" means the amounts required to be paid by the provisions of Section 4.1(d) hereof.

"Authorized Company Representative" means the person at the time designated to act on behalf of the Company by written instrument furnished to the Issuer and the Trustee, containing the specimen signature of such person and signed on behalf of the Company by an officer of the Company. Such instrument may designate an alternate or alternates.

"Authorized Issuer Representative" means the person at the time designated to act on behalf of the Issuer by written instrument furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by the Executive or the Clerk of the Issuing Authority. Such instrument may designate an alternate or alternates.

"Bonds" means the Bonds issued by the Issuer pursuant to the Indenture and designated "Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project)" and includes any Bonds (Allen County Aggregates, Inc. Project)," and includes any Bond issued in exchange therefor pursuant to the Indenture and the Bond Purchase Agreement.

"Bond Fund" means the Bond Fund created in the Bond Legislation.

"Bondholders" or "Holder" means, initially, the Original Purchaser, and any subsequent bearer of a coupon Bond which is not registered as to principal or the principal of which is registered to bearer, or the person in whose name a registered Bond is registered, provided that, solely as used in the definitions of "Determination of Taxability" and "Event of Taxability", the term "Bondholder" also includes the owner of an undivided participation interest in any Bond.

"Bond Legislation" means the Ordinance adopted by the Issuing Authority authorizing the issuance of the Bonds.

"Bond Purchase Agreement" means the Bond Purchase Agreement of even date herewith among the Issuer, the Company, \_\_\_\_\_, and The Cincinnati Insurance Company, and any permitted amendments or supplements thereto.

"Code" means the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder.

"Completion Date" means the date of completion of the acquisition, construction and installation of the Project as that date shall be certified as provided in Section 3.5 hereof.

"Construction Fund" means the Construction Fund created in the Bond Legislation.

"Construction Period" means the period between the earlier of (a) the date of this Agreement or (b) the beginning of the acquisition, construction and installation of the Project, and the Completion Date.

"Determination of Taxability" means (i) the filing by the Company or any other person or entity of any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations §1.103-10(b)(2)(vi)(c) or otherwise) which discloses that an Event of Taxability has occurred, or (ii) the final assertion by the Internal Revenue Service or any agent thereof to the effect that interest on the Bond is includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code) or (iii) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bond to be included in the gross income for Federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a

"related person" as those terms are used in Section 103 of the Code). For purposes of clause (iii) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

"Event of Default" means any of the events described in Section 7.1 hereof.

"Event of Taxability" means the occurrence of circumstances on the basis of which a Determination of Taxability shall occur, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bonds becoming includable in the gross income for Federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 103 of the Code), such occurrence of circumstances relating to a specific point in time. Without limiting the generality of the foregoing, the incurring of capital expenditures in excess of those permitted under Section 103(b)(6) of the Code, thereby causing any interest payable on the Bonds to be includable in the gross income of any Holder under the Code, shall constitute an Event of Taxability.

"Guarantor" means Paul L. Eickhoff and Lynn R. Bunsold, jointly and severally.

"Guaranty Agreement" means the Guaranty Agreement of even date herewith executed by the Guarantor and accepted by the Trustee, and any permitted amendments or supplements thereto.

"Indenture" means the Trust Indenture of even date herewith between the Issuer and the Trustee, including the Bond Legislation as a part thereof, and any permitted amendments or supplements thereto.

"Interest Payment Date" means the first day of each April and October, commencing April 1, 1982 and continuing semi-annually thereafter.

"Interest Rate for Advances" means the annual rate of interest which is equal to twenty-one percent (21%); provided that in no event shall the Interest Rate for Advances exceed the rate permitted by law.



"Mortgage" means the Mortgage and Security Agreement of even date herewith whereby the Borrower has granted to the Trustee, as security for the payment of the Note and the Bonds, a mortgage on and security interest in the Project and Project Site, and any amendments or supplements thereto.

"Note" means the Promissory Note, the form of which is attached hereto as a part hereof as Exhibit C, issued by the Company to the Issuer concurrent with the delivery of this Agreement.

"Original Principal Sum" means \$920,000, the aggregate original face amount of the Bonds.

"Original Purchaser" means The Cincinnati Insurance Company, an Ohio corporation (as to the Bonds maturing October 1, 2001), and \_\_\_\_\_, an individual (as to the Bonds maturing October 1, 1986), collectively.

"Payment in Full of the Bonds" means the first date when the Bonds are no longer deemed to be outstanding under the provisions of the Indenture.

"Pledged Receipts" means (a) the Note Payments, (b) subject to the provisions of Sections 3.04, 4.02 and 8.02 of the Indenture with respect to the Trustee holding moneys for the benefit of any Bondholder, all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of the Agreement, to be made by the Company directly to the Issuer or the Trustee, (c) any moneys on deposit in the Construction Fund, the Bond Fund or the Reserve Fund and (d) the income and profit from the investment of any moneys while held in the Construction Fund, the Bond Fund or the Reserve Fund.

"Project" means the Project Site and the real, personal, or real and personal property, including undivided interests or other interests therein, identified in Exhibit A attached hereto as a part hereof, or acquired, constructed or installed as a replacement or substitution therefor or an addition thereto, or as may result from a revision of the plans and specifications therefor in accordance with the provisions of this Agreement or the Mortgage.

"Project Site" means the real estate and interests in real estate constituting the site and part of, and part of the Project, as described in Exhibit B attached hereto as a part hereof.

"Taxable Rate of Interest" means the Interest Rate for Advances.

"Trustee" means the Trustee at the time serving as such under the Indenture.

Section 1.2. Rules of Construction. (a) Unless the context clearly indicates to the contrary, the words "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. Words importing the singular number shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders.

(b) Any reference herein to the Issuer or the Issuing Authority or any officer or official of the Issuer shall include those who succeed to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference herein to a section or provision of the Code, or to a section, provision or chapter of the Indiana Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded; provided that no such change shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Company under this Agreement.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by the Issuer. The Issuer represents and warrants that:

(a) It is a duly organized and validly existing municipal corporation and political subdivision under the laws of the State of Indiana.

(b) It has the power to issue the Bonds, to enter into this Agreement, the Bond Purchase Agreement and the Indenture, and to carry out its obligations hereunder and thereunder, and neither the execution and delivery of any such agreements or instruments nor performance by the Issuer of any of its obligations hereunder or thereunder will violate or constitute a default under any provision of law or regulation, or any writ, order or decree of any court or governmental agency, or any indenture, agreement or other undertaking to which the Issuer is a party or by which it is bound.

(c) It has duly accomplished all conditions necessary to be accomplished by it prior to issuance and delivery of the Bonds and coupons and execution and delivery of this Agreement, the Bond Purchase Agreement and the Indenture.

(d) It has been duly authorized to execute and deliver this Agreement, the Bond Purchase Agreement and the Indenture and to issue the Bonds and coupons.

Section 2.2. Representations and Warranties by the Company. The Company represents and warrants that:

(a) It is a for profit corporation duly organized, validly existing and in good standing under the laws of the State of Indiana.

(b) It has the power and has been duly authorized to enter into this Agreement and the Bond Purchase Agreement, issue the Note, grant the Mortgage and perform all of its obligations hereunder and thereunder.

(c) The willingness of the Issuer to issue the Bonds for purposes of financing costs of acquiring, constructing and installing the Project has induced the Company to locate the Project within the State of Indiana and, more particularly, within the boundaries of the Issuer.

(d) The Project will create or preserve jobs and employment opportunities within the boundaries of the State and the Issuer, thereby improving the economic welfare of the State and the Issuer.

(e) The Project constitutes land or property of a character subject to the allowance for depreciation under Section 167 of the Code, and substantially all of the net proceeds received from the sale of the Bonds (net proceeds being those proceeds remaining after paying all of the expenses incurred in connection with the issuance of the Bonds) will be used to finance the acquisition, construction and installation of the Project.

(f) The acquisition, construction and installation of the Project was not commenced prior to July 20, 1981.

(g) The Company is not subject to any contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the Company from entering into this Agreement or the Bond Purchase Agreement, issuing the Note, granting the Mortgage or performing any of its obligations hereunder or thereunder; and the execution and delivery of this Agreement, the Bond Purchase Agreement, the Note and the Mortgage, the consummation of the transactions contemplated hereby and thereby, and the fulfillment of or compliance with the terms and conditions of this Agreement, the Bond Purchase Agreement, the Note and the Mortgage will not conflict with or result in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the Company is a party or by which it is bound, or constitute a default under any of the foregoing, and will not violate any provision of law or regulation applicable to the Company or any court or administrative order or decree.

(h) Based on current facts, estimates and circumstances, it is expected that (i) the acquisition, construction and installation of the Project and the expenditure of all proceeds received from the sale of the Bonds will be fully completed by \_\_\_\_\_, (ii) work on the Project has commenced or will promptly commence and is expected to proceed with due diligence to completion, (iii) the net proceeds from the issuance of the Bonds are needed for the purpose of paying all or a part of the cost of the acquisition, construction and installation of the Project, and (iv) the Company does not intend to sell or otherwise dispose of the Project, in whole or in part, prior to Payment in Full of the Bonds.

(i) The acquisition, construction and installation of the Project will comply with all applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained.

(j) The acquisition, construction and installation of the Project as well as its intended use and operation are in complete conformance with the purposes and provisions of the Act, and in particular the Project is and will be operated as an economic development facility constituting a limestone quarry for the processing of limestone and other minerals.

### ARTICLE III

#### ISSUANCE OF BOND AND LOAN OF PROCEEDS; COMPLETION OF THE PROJECT; PAYMENT OF COSTS

Section 3.1. Issuance of Bonds and Loan of Proceeds.  
In order to provide funds for payment of costs of the acquisition, construction and installation of the Project, the Issuer has, concurrent with the delivery of this Agreement, issued and delivered the Bonds to the Original Purchaser. The Bonds have been initially issued as coupon bonds in the form set forth in the Indenture. Pursuant to the Indenture and the Bond Purchase Agreement, the proceeds from the sale of the Bonds will be deposited in the Construction Fund, and such deposit constitutes a loan of such proceeds from the Issuer to the Company.

Section 3.2. Acquisition, Construction and Installation of the Project. The Company shall promptly commence and complete the acquisition, construction and installation of the Project substantially in accordance with the plans and specifications therefor now on file with the Issuer and the Original Purchaser, subject to such changes therein as the Original Purchaser may approve and as do not change the character of the Project as an economic development facility or cause the Project or the purpose thereof to be in nonconformance with the purposes and provisions of the Act. Such completion shall be accomplished as promptly as practicable, delays incident to strikes, riots, acts of God or the public enemy or any other cause beyond the reasonable control of the Company excepted, but if such acquisition, construction and installation are not completed, there shall be no resulting liability on the part of the Issuer and no diminution or postponement of the payments required to be made by the Company hereunder or under the Note.

Section 3.3. Disbursements from the Construction Fund. The Issuer has in the Bond Legislation authorized and directed the Trustee to disburse the moneys in the Construction Fund for payment of, or reimbursement of the Issuer or the Borrower for payment of, the following:

(a) costs incurred directly in connection with acquisition, construction and installation of the Project, including, but not limited to, the costs of land, labor, services, materials, equipment, architectural, engineering, legal and supervisory services, insurance premiums, taxes,

assessments and other charges attributable to the Construction Period, and interest on the Bonds during the Construction Period;

(b) expenses incurred in connection with the authorization, sale, issuance and delivery of the Bonds and the preparation and delivery of all agreements, instruments and documents related thereto, including, but not limited to, all financial, legal, administrative, accounting, printing and engraving fees, expenses and charges and all recording, filing, title examination or insurance, surety bond and any other fees, expenses or charges relating to the Project or the Bonds.

Except as hereinafter provided, the payments specified in subsections (a) and (b) of this Section shall be made by the Trustee only upon receipt of a written requisition for such payment, signed by the Authorized Company Representative, stating the name and address of the person, firm or corporation to whom such payment should be made, and certifying:

(1) that an obligation in the stated amount has been incurred, is a proper charge against the Construction Fund and has not been the basis of any previous withdrawal from the Construction Fund;

(2) the purpose and circumstances of such obligation in reasonable detail;

(3) that the Company has no knowledge of any vendors', mechanics', or other liens or rights to liens which have not been disclosed to the Original Purchaser, nor of any such liens or rights to liens which should be satisfied or discharged before payment of such obligation is made; and

(4) that insofar as such obligation was incurred for labor, services, materials or equipment in connection with the acquisition, construction or installation of the Project, such labor and services were actually performed, and such materials and equipment were actually used or installed, in connection with the acquisition, construction or installation of the Project.

(5) that no Event of Default has occurred.

Each disbursement from the Construction Fund shall be subject to compliance to the satisfaction of the Original Purchaser with the applicable conditions to disbursements set forth in the Bond Purchase Agreement.

In the event that, in the sole judgment of any Original Purchaser reasonably exercised, the Company is not timely submitting requisitions for payments of items described in subsections (a) and (b) of this Section, the Original Purchaser may at its option provide the Company with written notice thereof, which written notice shall specify with particularity the items or categories of items for which payment is due. Should the Company thereafter fail to submit to the Trustee a written requisition for payment of any such items in the form herein described within five (5) days of the Company's receipt of the Original Purchaser's notice, then the Trustee shall be authorized (but shall not be obligated) to make payment of all such items from the Construction Fund, notwithstanding the Company's failure or refusal to request same.

All moneys in the Construction Fund (including moneys earned pursuant to the provisions of Section 3.8 hereof) remaining after the Completion Date shall be used to prepay the Note pursuant to the third paragraph of Section 6.1 hereof on the next succeeding Interest Payment Date; provided that amounts approved by the Authorized Company Representative shall be retained in the Construction Fund for payment of costs specified in subsections (a) and (b) of this Section which are not then due and payable, and any balance of such retained funds after full payment of all such costs shall be applied as hereinabove set forth in this paragraph.

In making any payment from the Construction Fund, the Trustee may rely on any requisition or direction delivered to it pursuant to this Section, and the Trustee and the Issuer shall be relieved of all liability with respect to making any such payment in accordance with any such requisition or direction without inspection of the Project or any other investigation. Upon receipt of any requisition or direction, the Trustee shall be allowed a reasonable amount of time, in view of the character and maturities of the Construction Fund investments (if any) at such time, for the making of disbursements pursuant to such requisition or direction, unless the Company shall direct in writing the immediate liquidation of all required investments.

Section 3.4. Protection of Issuer with Respect to Construction Fund Disbursements. The Company shall be solely responsible for the accuracy and completeness of all requisitions furnished pursuant to the provisions of Section 3.3 hereof, and the Company shall indemnify and save the Issuer, its officials, employees and agents harmless from and against any and all claims, damages, expenses, costs and



liabilities arising out of any disbursement from the Construction Fund made in violation of any provision of this Agreement or the Bond Purchase Agreement.

Section 3.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating that, except for amounts retained by the Trustee for costs of the Project not then due and payable, (i) the acquisition, construction and installation of the Project has been completed and all labor, services, materials, supplies, and equipment used in such acquisition, construction and installation have been paid for, (ii) all other facilities necessary in connection with the Project have been acquired and constructed and all costs and expenses incurred in connection therewith have been paid, (iii) the Project and all other facilities in connection therewith have been acquired and installed to his satisfaction. Notwithstanding the foregoing, such certificate by the Authorized Company Representative shall state that it is given without prejudice to any rights against third parties that exist on the date of such certificate or which may subsequently come into being.

Section 3.6. Company Required to Pay Project Costs in Event Construction Fund Insufficient. If the moneys in the Construction Fund available for payment of the costs of the Project are insufficient to pay such costs in full, the Company shall complete the Project and pay all that portion of the costs of the Project as are in excess of the moneys available therefor in the Construction Fund. The Issuer makes no warranty, either express or implied, that the moneys paid into the Construction Fund which are available for payment of the costs of the Project will be sufficient to pay all such costs. If the Company pays any portion of the cost of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer, nor shall it be entitled to any diminution or postponement of the payments required to be made by it hereunder or under the Note.

Anything contained in this Agreement to the contrary notwithstanding, it is expressly understood and agreed that the loan provided for herein shall at all times be in balance. The loan shall be deemed to be in balance only when the undistributed proceeds of the loan, after provision for all retainages, shall equal or exceed the amount necessary, based on the Original Purchaser's estimate of the cost of construction, to pay for all work done or to be done and expenses for the completion of the acquisition, construction and installation of the Project. The Company agrees that if for any reason the amount of such undistributed loan proceeds

shall at any time be or become insufficient for such purpose, regardless of how such condition may arise or be caused, the Company will, within five days after written request by the Original Purchaser, deposit the deficiency in the Construction Fund, which deposit shall first be exhausted before any further disbursement of the loan proceeds shall be made and which deposit shall be held free and clear of claims of the Trustee's creditors.

Section 3.7. Investment of Construction Fund, Reserve Fund and Bond Fund Moneys. Any moneys held as part of the Construction Fund, Reserve Fund or the Bond Fund shall, at the oral or written request of the Authorized Company Representative, be invested or reinvested by the Trustee in Eligible Investments, as specified in the Indenture. The Company hereby covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery and payment for the Bonds, so that the Bonds will not constitute arbitrage bonds under Section 103(c) of the Code. Any oral request for the investment of moneys shall be promptly confirmed in writing by the Authorized Company Representative.

ARTICLE IV  
PROVISIONS FOR PAYMENT

Section 4.1. Payment Obligations of the Company.

(a) In consideration of the issuance of the Bonds and the Issuer's agreement that the proceeds thereof be used as provided in this Agreement, the Company has, concurrent with the delivery of this Agreement, executed and delivered the Note to the Issuer. The Company shall promptly make when due all payments on the Note.

(b) The Company shall reimburse or pay the Issuer for any and all costs, expenses and liabilities paid or incurred by the Issuer in satisfaction of any obligation of the Company hereunder not performed by the Company in accordance with the terms hereof. The Company shall also prepay or reimburse the Issuer for any and all expenses paid or to be paid by the Issuer and requested by the Company, or required by this Agreement, the Mortgage, the Bond Purchase Agreement or the Indenture or incurred in enforcing the provisions of this Agreement or the Mortgage or Bond Purchase Agreement or the Indenture, or incurred in defending any action or proceedings with respect to the Project, this Agreement, the Mortgage, the Bond Purchase Agreement or the Indenture, or arising out of or based upon any other document relating to the issuance of the Bonds, which are not otherwise required to be paid by the Company hereunder.

(c) The Company shall pay, as and when the same become due, the reasonable fees, charges and expenses of the Trustee as trustee, bond registrar and paying agent, and the reasonable fees, charges and expenses of any other paying agents for the Bonds, all as provided in the Indenture; provided that the Company may, without creating a default hereunder, contest in good faith the necessity for any Extraordinary Services or Extraordinary Expenses, and the reasonableness of any such fees, charges or expenses.

(d) The Company shall pay, to the Trustee, monthly payments in an amount equal to the difference between the amount necessary on each Interest Payment Date for payment of principal and interest then due on the Note and the sum of \$\_\_\_\_\_ (such payment is hereinafter referred to as the "Reserve Fund Payment"). Each such monthly payment shall be credited by the Trustee to the Reserve Fund created under the Indenture and shall be used for the purposes for which such Reserve Fund was created, as provided in the Indenture. The Reserve Fund Payment shall

cease when the aggregate amount accumulated in the Reserve Fund at any time, whether from payments made by the Company hereunder, from any other amount deposited in the Reserve Fund pursuant to the terms of the Indenture, from interest income received by the Trustee from the investment of such funds, or from any other source, shall equal not more than \$138,000 (the "Reserve Requirement"). If after such maximum amount is deposited in the Reserve Fund, the Reserve Fund is depleted for any reason, the Reserve Fund Payment shall again be due and payable monthly until the Reserve Requirement has been met. The Trustee shall notify the Company when the Reserve Requirement has been met.

The Company shall also pay, to the Trustee, at the same time Note payments are due, monthly payments in those amounts necessary to pay when due the premium necessary to maintain the life insurance policy or policies required under Section 5.16 hereof. The Trustee shall hold the Additional Payments (other than Reserve Fund Payments) required by this subsection in trust for the benefit of the bondholders in a separate disbursement account, and pay the issuer of such life insurance policy, the amounts due it when as premiums on such life insurance policy.

Section 4.2. Payments Assigned. The Issuer has, pursuant to the Indenture, assigned the Note, this Agreement and the Pledged Receipts to the Trustee, all without recourse to Issuer, and the Company hereby assents to such assignments. The Company further agrees that all payments under the Note shall be made directly to the Trustee for the account of the Issuer and deposited in the Bond Fund, and that all payments required to be made under subsection (b) or (c) of Section 4.1 hereof shall be made directly to the entity to which they are due, and that all Additional Payments required to be made under subsection (d) of Section 4.1 hereof shall be made directly to the Trustee for the account of the Issuer and deposited in the Reserve Fund.

The Trustee shall endorse on the principal payment schedule attached to the Note an appropriate endorsement evidencing the date and amount of each principal payment or prepayment made with respect thereto by the Company.

Section 4.3. Obligations Unconditional. The obligations of the Company to make the payments required to be made under the Note, the Mortgage and this Agreement, and to perform and observe the other agreements on its part contained herein and in the Note, the Mortgage and the Bond Purchase Agreement, shall be absolute and unconditional and shall not be subject to diminution by set-off, counterclaim, abatement or otherwise. Until Payment in Full of the Bonds, the Company (A) will not suspend or discontinue any payments required to be made under the Note except to the extent the same have been prepaid, (B) will perform and observe all its other agreements

contained herein, in the Bond Purchase Agreement and in the Mortgage and (C) except as provided in Sections 6.1 and 6.2 hereof, will not attempt to terminate this Agreement or its obligations under the Note, this Agreement, the Bond Purchase Agreement or the Mortgage for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, sale, loss, destruction or condemnation of or damage to the Project or the Project Site, any change in the tax or other laws of the United States of America or of the State of Indiana or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agreement.

## ARTICLE V

### PARTICULAR COVENANTS

#### Section 5.1. Issuer's Expenses; Indemnification.

Whether or not the transactions and events contemplated by this Agreement, the Indenture, the Note, the Mortgage and the Bond Purchase Agreement shall be consummated, the Company shall (a) pay, and hold the Issuer harmless from and against any and all liability for the payment of, all taxes, charges and out-of-pocket expenses (including attorneys fees) arising in connection with such contemplated transactions and events, and (b) protect, indemnify and hold harmless the Issuer from and against any and all claims, demands and causes of action of any nature whatsoever in connection with such contemplated transactions and events, and all reasonable fees and expenses (including attorneys fees), incident to the defense thereof, including (without implied limitation) all claims or liability resulting from any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction and installation of the Project or the use thereof. Nothing contained herein shall require the Company to indemnify the Issuer or the Holder for any claim or liability resulting from any tortious act of such party or for any claim or liability which the Company was not given the opportunity to contest by reason of any action of the Issuer.

Section 5.2. Assignment by Issuer. Except for the assignment of the Note, this Agreement and the Pledged Receipts to the Trustee, the Issuer shall not attempt to further assign, transfer or convey its interest in this Agreement or the Note or create any pledge or lien of any form or nature with respect to the Project or the Pledged Receipts, except in its governmental capacity incident to collection of taxes, assessments or other governmental charges.

Section 5.3. Redemption of Bonds. The Issuer, at the request of the Company, at any time, and if the Bonds are then redeemable in whole or in part, shall forthwith take all steps that may be necessary under the applicable redemption provisions of the Indenture to effect redemption of all or any portion of the Bonds, as may be specified by the Company in such request, on the earliest redemption date on which such redemption may be made under such applicable provisions, being the date set for such redemption by the Company pursuant to Article VI hereof. So long as the Company is not in default hereunder or the Issuer is not obligated to redeem the Bonds

pursuant to the terms hereof or of the Mortgage, Bond Purchase Agreement or the Indenture, and except for the amortization provisions provided for in the Bond Legislation, neither the Issuer nor the Trustee shall redeem any of the Bonds prior to its maturity unless requested in writing by the Company.

Section 5.4. Reference to Bonds Ineffective After Bonds Paid. Upon Payment in Full of the Bonds, all references in this Agreement and the Note to the Bonds and the Trustee shall be ineffective and neither the Issuer, the Trustee nor any Holder shall thereafter have any rights hereunder or under the Note, and the Company shall have no further obligation hereunder or under the Note, except for (a) any obligation to the Issuer, the Trustee or the Holder that shall have theretofore vested and that shall then remain unsatisfied and (b) the obligations set forth in Section 6.3 hereof if a Determination of Taxability shall occur after Payment in Full of the Bonds.

Section 5.5. Concurrent Discharge of Note. In the event any portion of the Bonds shall be paid and discharged, or deemed to be paid and discharged pursuant to any provisions of this Agreement or the Indenture, an equivalent principal amount of the Note shall be deemed fully paid for purposes of this Agreement and to such extent, the obligations of the Company thereunder terminated. Upon Payment in Full of the Bonds, the Note shall be surrendered by the Trustee to the Company for cancellation.

Section 5.6. Company's Performance under Mortgage, Bond Purchase Agreement and Indenture. The Company has examined the Indenture, approves the form and substance thereof and agrees to be bound by its terms. The Company shall, for the benefit of the Issuer and each Holder, do and perform all acts and things required or contemplated in the Mortgage, the Bond Purchase Agreement or the Indenture to be done or performed by it, including, without limitation, the obligations of the Company with respect to insurance, taxes and other charges and maintenance, modification, repairs and restoration of the Project and Project Site.

Section 5.7. Assignment of Agreement. The Company may at any time assign its rights under this Agreement, in whole or in part, with the prior written consent of the Holder and subject to each of the following conditions:

(a) no such assignment shall relieve the Company from primary liability for any of its obligations hereunder and under the Note, the Bond Purchase Agreement and the Mortgage;

(b) the assignee shall assume the obligations of the Company hereunder and under the Note and Mortgage to the extent of the interest assigned;

(c) the Company shall, within 10 days after execution thereof, furnish or cause to be furnished to the Issuer and the Trustee a true and complete copy of each instrument evidencing such assignment and assumption; and

(d) no such assignment shall cause the Project to be in nonconformance with the purposes or provisions of the Act.

Section 5.8. Company Not to Adversely Affect Tax Exempt Status of Interest on Bonds. The Company, for the benefit of the Issuer and each Holder, hereby represents that it has not taken, or permitted to be taken on its behalf, and agrees that it will not take, or permit to be taken on its behalf, any action which would adversely affect the exemption from Federal income taxation of the interest paid on the Bond, and that it will make and take, or require to be made and taken, such acts and filings as may from time to time be required under the Code to maintain the exemption from Federal income taxation of the interest on the Bond. The Company does hereby further covenant with and represent to the Issuer and each Holder that there have never been issued any obligations with respect to "facilities" described in Section 103(b)(6) of the Code which are located, as of the date of the delivery of the Bond to the Original Purchaser, in the unincorporated area of the County of Allen, Indiana, which obligations should be taken into account in determining the aggregate face amount of the Bond as provided in Section 103(b)(6) of the Code.

Notwithstanding anything herein to the contrary, any failure by the Company to comply with any of its obligations under this Section which results in a Determination of Taxability shall not constitute or give rise to an Event of Default if the Company makes when due all payments required herein and in the Note to be paid upon the occurrence of a Determination of Taxability.

Section 5.9. Opinion to be Provided. Prior to October 1, 1986, and October 1 in each fifth year thereafter, until Payment in Full of the Bonds, and at such other times as the Trustee shall reasonably request, the Company shall on behalf of the Issuer cause to be delivered to the Trustee an opinion of counsel, who may be counsel for the Company, addressed to the Issuer and the Trustee and stating that based upon the law in effect on the date of such opinion no filing, registration or recording and no refiling, reregistration or



rerecording of the Mortgage or any assignment or any amendments or supplements thereto, or any financing statement, amendments thereto, continuation statements or instruments of a similar character relating to the pledges and assignments made by the Issuer or the Company to secure the Bonds, is required by law during the one year period commencing on such October 1, in order to fully preserve and protect the security of the Trustee and the rights of the Trustee under the Indenture and the Mortgage, or if such filing, registration, recording, refiling, reregistration or rerecording is necessary, setting forth the requirements in respect thereto. The Company, with such assistance and cooperation from the Issuer as the Company may reasonably request, shall take or cause to be taken all action necessary to satisfy any such requirements. Promptly after any filing, registration, recording, refiling, reregistration or rerecording of any such agreement or instrument, the Company on behalf of the Issuer will deliver to the Trustee an opinion of counsel, who may be counsel for the Company, to the effect that such filing, registration, recording, refiling, reregistration or rerecording has been duly accomplished and setting forth the particulars thereof.

Section 5.10. Financial Statements. So long as any of the Bonds are outstanding, the Company shall maintain a standard and modern system for accounting in accordance with generally accepted principles of accounting and shall furnish to the Trustee (for inspection by the Trustee and Issuer and/or any Bondholder or any authorized representative of either) and to the Original Purchaser:

(a) Within thirty (30) days after the end of each quarter of each fiscal year, beginning with the first quarter ending after the date hereof, a copy of its balance sheet as of the end of such quarter, and, if it should ever have any subsidiary which has financial statements which could be consolidated with those of the Company, a copy of its consolidated and consolidating balance sheet as of the end of such quarter, and profit and loss and surplus statements for such quarter, and if it should ever have any subsidiary which has financial statements which could be consolidated with those of the Company, a copy of its consolidated and consolidating profit and loss and surplus statements for such quarter, all of which statements shall be in reasonable detail, prepared and certified as complete and correct, subject to changes resulting from year-end adjustments, by the chief financial officer of the Company, and shall be in such form as is reasonably acceptable to the Trustee;

(b) Within ninety (90) days after the end of each fiscal year, beginning with the 1981 fiscal year, a copy of its audited balance sheets as of the end of such fiscal year, and if it should ever have any subsidiary which has financial statements which could be consolidated with those of the Company, a copy of its consolidated and consolidating balance sheet as of the end of such fiscal year, its audited profit and loss and surplus statements for such year and, if it should ever have any subsidiary which has financial statements which could be consolidated with those of the Company, a copy of its consolidated and consolidating profit and loss and surplus statements for such year, which statements shall be examined by a firm of independent certified public accountants acceptable to the Original Purchaser and the Trustee (which acceptance shall not be unreasonably withheld), and accompanied by an opinion thereon of such independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods involved and present fairly the financial position and results of operations at the dates and for the periods covered thereby and applied on a basis consistent with that of the preceding fiscal year (except for any changes specified and approved by the accountants in their option) and that the audit by the accountants in connection with the financial statements has been made in accordance with generally accepted auditing standards;

(c) With the statements submitted under (a) and (b) above, a certificate signed by the chief financial officer of the Company, (i) stating there no Event of Default specified in Section 7.1 hereof, nor any event which upon notice or lapse of time, or both would constitute such an event existed or exists, specifying the nature and period of existence and what action the Company has taken or is taking or proposes to take with respect thereto, provided however that such officer shall have no individual liability for the accuracy of the information contained in such certificate, but this clause shall not affect the Company's liability therefore.

(d) Within one hundred and five (105) days after the end of each fiscal year, beginning with the 1981 fiscal year, a copy of the federal income tax return of the Company, and within five (5) days after due, including extensions, a copy of the federal income tax returns of each Guarantor;

(e) After written request from the Trustee, copies of all statements, notices and reports the Company shall thereafter send to any stockholder, regulatory agency or creditor; and

(f) With reasonable promptness, such other information as the Trustee may reasonably request.

Section 5.11. Pledge or Encumbrance of Assets. The Company agrees that it will not create, incur, assume or permit to continue in existence any mortgage, lien, charge or encumbrance on, or security interest in, or pledge or deposit of, or conditional sale or other title retention agreement with respect to, any property or asset now owned or hereafter acquired by the Company, provided that the restrictions of this Section shall not prohibit:

(a) the lien to Issuer, assigned to the Trustee securing the Note issued under this Agreement;

(b) liens for taxes, assessments or governmental charges the payment of which is not at the time required by Section of the Mortgage and Security Agreement;

(c) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, if a reserve or other appropriate provision, required by generally accepted accounting principles, if any, shall have been made therefor;

(d) liens incurred or deposits made in the ordinary course of business in connection with workmen's compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment directly or indirectly of borrowed money);

(e) any attachment lien being contested in good faith and by proceedings promptly initiated and diligently conducted, unless the attachment giving rise thereto shall not, within thirty (30) days after the entry thereof, have been discharged or fully bonded or shall not have been discharged prior to the termination of any such bonds;

(f) any judgment lien, unless the judgement it secures shall not, within thirty (30) days after the entry thereof, have been discharged or execution thereof stayed pending appeal, or shall not have been discharged prior to the expiration of any such stay;

(g) easements, rights-of-way, zoning restrictions and other restrictions, charges or encumbrances incurred in the ordinary course of business and not interfering with the ordinary conduct of the business of the Company or any subsidiary;

(h) liens incurred in the ordinary course of business, including for the purchase of furniture, fixtures or equipment and aggregating no more than \$100,000 at any time, and including liens incurred in connection with the construction and equipping of nursing centers for which the Company has received final federal and/or state approval, as required, as of the date hereof. "Ordinary course of business" is defined to mean prudent business practices in existence on the date hereof and other business practices which would be in the ordinary course of business to a prudent business person in similar circumstances.

(i) liens approved by the holders of sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then outstanding.

Section 5.12. Indebtedness. The Company shall not incur, create, assume or permit to exist Indebtedness for borrowed money or Indebtedness on account of deposits, advances or progress payments under contracts, or other Indebtedness evidenced by notes, bonds, debentures or similar obligations which in the aggregate is greater than 3.0 times the Company's Tangible Capital Base.

For the purposes of this section, the following capitalized terms shall have the meanings specified below:

"Indebtedness" means (i) all items (except items of capital stock, of capital surplus, of general contingency reserves or of retained earnings, deferred income taxes, and amounts attributable to minority interest, if any) which in accordance with generally accepted accounting principles would be included in determining total liabilities on a consolidated basis (if the Company should ever have a subsidiary) as shown on the liability side of a balance sheet as at the date as of which Indebtedness is to be determined, (ii) all indebtedness secured by any mortgage, pledge, lien or conditional sale or other title retention agreement to which any property or asset

owned or held is subject, whether or not the indebtedness secured thereby shall have been assumed (excluding non-capitalized leases which may amount to title retention agreements, but including all capitalized leases), and (iii) all indebtedness of others which the Company or any subsidiary has directly or indirectly guaranteed, endorsed (otherwise than for collection or deposit in the ordinary course of business), discounted or sold with recourse or agreed (contingently or otherwise) to purchase or repurchase or otherwise acquire, or in respect of which the Company or any subsidiary has agreed to supply or advance funds (whether by way of loan, stock purchase, capital contribution or otherwise) or otherwise to become directly or indirectly liable and shall specifically include the Bonds.

"Tangible Capital Base" means the sum of the Company's Tangible Net Worth plus Subordinated Indebtedness.

"Tangible Net Worth" means the total of the capital stock (less treasury stock), paid-in surplus, general contingency reserves and retained earnings (deficit) of the Company and any subsidiary as determined on a consolidated basis in accordance with generally accepted accounting principles, after eliminating all inter-company items and all amounts properly attributable to minority interests, if any, in the stock and surplus of any subsidiary, minus the following items (without duplication of deductions), if any, appearing on the consolidated balance sheet of the Company:

(i) all deferred charges (less amortization), unamortized debt discount and expense and corporate organization expenses;

(ii) the book amount of all assets which would be treated as intangibles under generally accepted accounting principles, including, without limitation, such items as goodwill, trademarks, trademark applications, trade names, service marks, brand names copyrights, patents, patent applications and licenses, and rights with respect to the foregoing;

(iii) the amount by which aggregate inventories or aggregate securities appearing on the asset side of such consolidated balance sheet exceed the lower of cost or market value (at the date of such balance sheet) thereof; and

(iv) any write-up in the book amount of any asset resulting from a revaluation thereof from the book amount entered upon acquisitions of such asset.

"Subordinated Indebtedness" shall mean all Indebtedness which is created under or evidenced by an instrument which contains terms subordinating such Indebtedness to the Note which terms have been approved in writing by the Trustee and the holders of a majority in principal amount of the bonds then outstanding.

Section 5.13. Mechanics' Liens. The Company shall not suffer or permit any mechanics' or other liens to be filed or exist against the Project, nor against any loan payment paid or payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Company or anyone holding the Project or any part thereof through or under the Company. If any such mechanics' or other liens shall at any time be filed, the Company shall, within ninety (90) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. The Company shall have the right to contest the validity and the amount of any such lien by appropriate proceedings timely instituted, provided that the Company (a) gives the Trustee written notice of its intention so to do, (b) diligently prosecutes any such contest, and (c) if requested by the Trustee, furnishes a bond in cash or by surety, whichever shall be acceptable to the Trustee, in an amount equal to twice the amount of the lien as claimed, and the Company shall not be in default hereunder for failure to pay or discharge any such lien so long as it is contesting the same as aforesaid.

Section 5.14. Current Assets - Current Ratio. At all times during the term of this Agreement, the Company's Current Assets shall exceed its Current Liabilities by at least \$750,000 and the Company's ratio of Current Assets to Current Liabilities shall exceed 2.0 to 1.

For the purposes of this section the following capitalized terms shall have the meanings specified below:

"Current Assets" shall mean all assets which may properly be classified as current assets in accordance with generally accepted accounting principles, provided that for the purpose of determining the current assets of the Company (i) notes and accounts receivable shall be included only if good and collectible and payable on demand or within twelve (12) months from the date as of which Current Assets are to be determined (and if not directly or indirectly renewable or extendible, at the option of the debtors, by their terms or by the terms of any instrument or agreement relating thereto, beyond such twelve (12) months, and shall be taken at their face value less reserves determined to be sufficient in

accordance with generally accepted accounting principles, and (ii) the cash surrender value of life insurance policies shall be excluded.

"Current Liabilities" shall mean all Indebtedness maturing on demand or within twelve (12) months from the date as of which Current Liabilities are to be determined (including, without limitation, amounts due within such twelve (12) months which constitute Subordinated Indebtedness, and such other liabilities (including taxes accrued as estimated) as may properly be classified as current liabilities in accordance with generally accepted accounting principles.

Section 5.15. Dividends - Stock Purchase. The Company shall not declare or pay any cash dividend or make any distribution on account of its capital stock (other than stock dividends) aggregating in excess of 20% of the prior year's after tax income, nor shall the Company permit a subsidiary to pay any cash dividend or make any distribution on account of its capital stock unless all such dividends or distributions are paid to the Company. If such amount is not paid in any year the amount not paid shall not cumulate from year to year. The Company shall not acquire, purchase or redeem any of its shares of capital stock which may be outstanding at any time during the term of this Agreement, nor shall it permit any subsidiary to acquire, purchase or redeem any of its shares unless the entire purchase or redemption price is paid to the Company.

Section 5.16. Maintenance of Existence of Company. Until Payment in Full of the Bonds, the Company shall maintain its existence and will not consolidate with or merge into any other corporation, or permit any other corporation to consolidate with or merge into it, and shall not dissolve or otherwise dispose of or transfer all or substantially all of its assets without the prior written consent of the holders of all the Bonds then outstanding, which consent may be withheld in the absolute discretion of the Bondholders.

If a transfer of assets, consolidation or merger is made as provided in this Section, the provisions of this Section shall continue in full force and effect and no further such transfer of assets, consolidation or merger shall be made except in compliance with the provisions of this Section.

Section 5.17. Officer and Director Compensation. The Company agrees that in any fiscal year of the Company, all compensation including salaries, bonuses and other forms of cash or cash equivalent forms of remuneration paid to any current officer or other management level employee shall not

exceed the greater of (i) 50% of the previous three year average earnings of the Company or (ii) the prior year's aggregate compensation adjusted for increases or decreases in the Consumer Price Index for Urban Wage Earners and Clerical Workers - Revised, for all cities, as published by the United States Department of Labor (Bureau of Labor Statistics) (Base 1967=100), or the comparable index if such Consumer Price Index is no longer published, from the first month of the prior year in which the payment is made.

Section 5.18 Life Insurance. Until Payment in Full of the Bonds, the Company shall obtain and maintain policies of ordinary whole life insurance on the lives of the key management personnel of the Company listed on Schedule 1 hereto, in the aggregate amount of \$460,000, issued by an insurer or insurers and on policy forms satisfactory to the Trustee. Such policies shall be payable to the Trustee, as insured, for the benefit of the Bondholders and for redemption of the maximum possible portion of the aggregate principal amount of the Bonds then outstanding and redeemable with such amount, pursuant to the Company's obligation to prepay the Note in part under the terms of the last two paragraphs of Section 6.2 hereof. Any portion not used to redeem such principal amount of Bonds shall be deposited in the Bond Fund, as an early payment of the interest portion of the next Note Payments. At the request of the Company, subject to the written consent of a majority of the Holders of the then outstanding principal amount of the Bonds, changes can be made in Schedule 1, but in no event shall the amount of such life insurance be reduced below \$460,000. Originals of such policies shall be deposited with the Trustee on behalf of the Bondholders.



ARTICLE VI  
PREPAYMENT OF THE NOTE

Section 6.1. Options to Prepay the Note. Except as hereinafter provided, the Company may not prepay the Note in whole or in part until on or after October 1, 1991. At any time thereafter, the Note may be prepaid in full or in part at any time. To exercise the option granted in this paragraph, the Company shall, on or before the 45th day next preceding any Interest Payment Date on the Bonds, give written notice to the Issuer and the Trustee of its intention to prepay the Note in full or in part on such Interest Payment Date, and shall specify therein the principal amount of the Bonds to be redeemed with the moneys received upon such prepayment and the prepayment price as provided in this Section. The exercise of such option to prepay the Note in full or in part shall also constitute an election by the Issuer to call for redemption, on the same date as the Note prepayment date, an equivalent portion of the principal amount of the Bonds outstanding on such date. The prepayment price which shall be paid to the Trustee by the Company in the event of its exercise of the option granted in this paragraph shall be an amount of money equal to 100% of the principal amount of the Bonds to be redeemed, plus accrued interest thereon to the redemption date, plus a prepayment premium calculated in accordance with the next following paragraph, plus (in the case of prepayment of the Note in full) all fees and expenses of the Trustee and any paying agents accrued and to accrue through such redemption date.

The prepayment premium payable pursuant to the preceding paragraph shall be as follows:

<u>If Prepaid (dates inclusive)</u>	<u>The premium shall be the following percentage of the Principal Amount of Bonds to be Redeemed</u>
October 1, 1991 and April 1, 1992	6%
October 1, 1992 and April 1, 1993	5-1/2%
October 1, 1993 and April 1, 1994	5%
October 1, 1994 and April 1, 1995	4-1/2%
October 1, 1995 and April 1, 1996	4%
October 1, 1996 and April 1, 1997	3-1/2%
October 1, 1997 and April 1, 1998	3%
October 1, 1998 and April 1, 1999	2-1/2%
October 1, 1999 and April 1, 2000	2%
October 1, 2000 and April 1, 2001	1-1/2%

Notwithstanding anything herein to the contrary, the Note shall be prepaid with excess moneys in the Construction Fund, pursuant to Section 3.3 hereof as follows. Any such prepayment shall not operate to reduce the amount defined as the Original Principal Sum and shall be accompanied by a prepayment premium equal to five percent (5%) of the Original Principal Sum.

The obligation of the Company to make monthly payments of principal and interest on the principal amount of the Note which remains outstanding after any partial prepayment pursuant to clause (a) of the preceding paragraph) shall not be affected by such partial prepayment, such partial prepayment operating instead to pay the principal of the Note at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

The Company shall also have, and is hereby granted, the option to prepay the Note in full, but not in part, if any of the following shall have occurred:

(a) The Project shall have been damaged or destroyed (i) to such extent that the Project cannot reasonably be restored within a period of six months to the condition thereof immediately preceding such damage or destruction, or (ii) to such extent that the Company is thereby prevented from carrying on its normal operations at the Project for a period of six months.

(b) Title to, or the temporary use of, all or a substantial portion of the Project shall have been taken under the exercise of the power of eminent domain by any governmental authority, or person, firm or corporation acting under governmental authority, (i) to such extent that the Project cannot reasonably be restored within a period of six months to a condition of usefulness comparable to that existing prior to such taking, or (ii) if such taking results in the Company being thereby prevented from carrying on its normal operations at the Project for a period of six months.

To exercise the option to prepay the Note in full pursuant to this paragraph, the Company shall, within 90 days following the event authorizing the exercise of such option, give written notice to the Issuer and the Trustee and shall specify therein the event giving rise to the exercise of such option and the date of such prepayment, which date shall be the Interest Payment Date on the Bonds next succeeding 45 days after the date such notice is mailed. The giving of such prepayment notice shall also constitute the giving of notice by the Issuer

of its call for redemption, on the same date as the Note prepayment date, of all of the Bonds outstanding on such date, and the Company shall make arrangements satisfactory to the Trustee for the giving of the required Bonds redemption notice. The prepayment price which shall be paid to the Trustee by the Company in the event of its exercise of the option granted in this paragraph shall be an amount of money equal to the principal amount of the Bonds outstanding plus accrued interest thereon to the redemption date, plus all fees and expenses of the Trustee and any paying agents accrued and to accrue through such redemption date.

The options granted to the Company in this Section shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default hereunder or under the Note, the Mortgage or the Bond Purchase Agreement; provided that no such exercise shall relieve the Company from liability for any such default.

Notwithstanding anything herein to the contrary, in no event shall more than one prepayment premium ever be payable under this Agreement. In addition, in the case of any prepayment of the Note in full or in part and the corresponding redemption of the Bonds in whole or in part pursuant to any provision of this Agreement, the Indenture, the Mortgage or the Bond Purchase Agreement, the amount on deposit in the Bond Fund on the redemption date shall be credited to the prepayment price to the extent such amount on deposit is in excess of the sum of (a) past due interest, (b) the principal amount of the Bonds theretofore required to be amortized, or otherwise paid, and (c) amounts due and payable pursuant to the Indenture, the Mortgage, the Bond Purchase Agreement or this Agreement for other than principal of and premium (if any) and interest on the Bonds.

Section 6.2. Obligations to Prepay Note in Part and in Full. The Company shall be obligated to prepay the Note in full (a) upon the occurrence of a Determination of Taxability or (b) if the Note or this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed herein and in the Note by reason of any changes in the constitution of the State of Indiana or the Constitution of the United States of America, or by reason of legislative or administrative action (whether state or Federal) or any final decree, judgment or order of any court (whether state or Federal) entered after the contest thereof by the Issuer, the Holder or the Company in good faith. Within 30 days after the event giving rise to such obligation to prepay the Note, the Company shall give written notice to the Issuer and to the Trustee and shall specify

therein the event giving rise to such prepayment obligation, the prepayment price as provided in this Section and the date of such prepayment, which date shall be not be less than 45 days nor more than 60 days from the date such notice is mailed. The giving of such prepayment notice shall also constitute the giving of notice by the Issuer of its call for redemption, on the same date as the Note prepayment date, of all the Bonds outstanding on such date, and the Company shall make arrangements satisfactory to the Trustee for the giving of the required Bonds redemption notice.

The prepayment price which shall be paid to the Trustee by the Company under the preceeding paragraph shall be an amount of money equal to the principal amount of the Bonds then outstanding, plus accrued interest thereon to the redemption date, plus all fees and expenses of the Trustee and any paying agents accrued and to accrue through such redemption, provided that upon any prepayment due to a Determination of Taxability, the prepayment price shall be increased by an amount equal to the difference between (a) (i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, if the interest rate on the Bonds commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holder to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holder in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

No prepayment of the Note under this Section shall relieve the Company from liability for any default hereunder or under the Note, the Mortgage, the Bond Purchase Agreement or the Indenture. If the Company fails to give any required notice or to take any other action required to be taken by it under this paragraph, the Trustee may specify the date for prepayment of the Note and redemption of the Bonds and thereupon call the Bonds for redemption in the manner provided for in the Indenture.

The Company shall be obligated to prepay the Note in part upon the payment to the Trustee of any life insurance proceeds pursuant to Section 5.16 hereof. Within 10 days after the event giving rise to such obligation to prepay the Note, the Company shall give written notice to the Issuer and to the Trustee, and shall specify therein the event giving rise to such prepayment obligation, the prepayment price as provided in this Section and the date of such prepayment, which date shall

be not less than 15 days nor more than 60 days from the date such notice is mailed. The giving of such prepayment notice shall also constitute the giving of notice by the Issuer of its call for redemption, on the same date as the Note prepayment date, of an equivalent portion of the principal amount of the Bonds outstanding on such date. If the Company fails to give any notice required to be given by it under this Section, the Trustee may specify the date for prepayment of the Note and redemption of such portion of the Bonds, and the giving of any such notice shall also constitute the giving of notice by the Issuer of its call for redemption, on the same date as the Note prepayment date, of an equivalent portion of the principal amount of the Bonds outstanding on such date.

The prepayment price which shall be paid to the Trustee by the Company under the preceeding paragraph shall be an amount of money equal to that amount which will redeem the maximum portion of the principal amount of the Bonds outstanding out of such proceeds, in multiples of \$5,000, plus accrued interest thereon to the redemption date.

Section 6.3. Determination of Taxability After Note Prepayment. Notwithstanding anything herein or in the Note to the contrary, if after payment or prepayment of the Note in full and Payment in Full of the Bonds a Determination of Taxability shall occur and such Determination of Taxability causes any interest paid on the Bonds to be includable in the gross income of any Holder under the Code, the Company shall, within 30 days after demand by such Holder, pay to such Holder an amount equal to the difference between (a)(i) the aggregate amount of interest on the Bonds which would have been payable to such Holder if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by such Holder to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by such Holder in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest on the Bonds actually paid to such Holder.

## ARTICLE VII

### DEFAULTS AND REMEDIES

Section 7.1. Events of Default. Each of the following events is hereby declared an Event of Default:

(a) The Company's failure to make any payment required to be made under the Note when the same becomes due and payable, or any failure by the Company to observe and perform any covenant, condition or agreement contained in Sections 5.11 through 5.16 hereof, inclusive.

(b) The occurrence of an event of default under the Mortgage or the Indenture, or the occurrence of any default by any Guarantor under the Guaranty Agreement.

(c) The Company's failure to observe and perform any of its other covenants, conditions or agreements contained herein for a period of 30 days after written notice (unless the Issuer and the Trustee shall agree in writing to an extension of such time prior to its expiration) specifying such failure and requesting that it be remedied, given by the Issuer or the Trustee to the Company.

(d) If any representation or warranty by the Company contained in this Agreement, the Mortgage or the Bond Purchase Agreement, or in any certificate or instrument delivered by the Company pursuant to this Agreement, the Mortgage or the Bond Purchase Agreement, is false or misleading in any material respect, or if any representation or warranty of any Guarantor contained in the Guaranty Agreement is false or misleading in any material respect.

(e) The Company's or any of the Guarantor's making a general assignment for the benefit of creditors, or admitting in writing its inability to pay its debts as they become due, or filing a petition in bankruptcy, or filing a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or filing any answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of it or of any material part of its properties.

(f) The Company's or any of the Guarantor's failure, within 60 days after the commencement of any proceeding against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, to have such proceeding dismissed, or, within 60 days after the appointment without its consent or acquiescence of any trustee, receiver or liquidator of it or of any material part of its properties, to have such appointment vacated, or, within 60 days after being adjudicated bankrupt or insolvent, to have such decree or order stayed or discharged.

(g) Any foreclosure of, or involuntary ouster of the Company from possession of, the Project or Project Site or any portion thereof, or any voluntary or involuntary transfer of possession or right of possession of the Project or Project Site or any portion thereof, without the written consent of the Holders of 66-2/3% of the then outstanding principal amount of the Bonds.

(h) Default by the Company under the terms of any indebtedness of the Company which has not been cured within the time period permitted pursuant to the terms and conditions of such indebtedness, or the occurrence of an event which shall give any creditor of the Company the right to accelerate the maturity of the Company's indebtedness to such creditor.

The provisions of paragraph (c) of this Section are subject to the same force majeure provisions as are contained in Section 3.1 of the Mortgage.

**Section 7.2. Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee, as the assignee and pledgee of the Issuer, shall have the following rights and remedies:

(a) The Trustee may declare all payments on the Note to be immediately due and payable, whereupon the same shall become immediately due and payable. If the Trustee elects to exercise the remedy afforded in this Section 7.2(a) and accelerates all payments on the Note, the amount then due and payable by the Company as accelerated payment shall be the sum of (1) the aggregate principal amount of the Bonds then outstanding, (2) all unpaid interest on the Bonds accruing to the date of such acceleration, (3) any prepayment premium which would have been payable if the Company had elected pursuant to the first paragraph of Section 6.1 hereof to prepay the Note in full on the Interest Payment Date nearest to such date of acceleration (or if the Note is not subject to optional prepayment as of such date of acceleration, a prepayment premium of 5% of the Original Principal Sum), (4) all fees and expenses of

the Trustee and any paying agents accrued and to accrue through such acceleration date and (5) any amount then due the Issuer hereunder.

(b) The Trustee may have access to and inspect, examine and make copies of, the financial books, records and accounts of the Company pertaining to the Project and Project Site and the operation thereof.

(c) The Trustee may exercise any remedy provided for in the Mortgage or Guaranty Agreement.

(d) The Trustee may take whatever action at law or in equity may appear necessary or desirable to collect any sums then due and thereafter to become due hereunder or under the Note or to enforce the observance or performance of any covenant, condition or agreement of the Company hereunder or under the Note.

Any amounts collected pursuant to action taken by the Trustee under this Section shall, except as otherwise provided in or permitted by the Mortgage, be paid into the Bond Fund and applied in accordance with the provisions of the Indenture. Subject to the provisions of Section 5.5 hereof, after Payment in Full of the Bonds and the payment of any costs occasioned by an Event of Default hereunder, any excess moneys in the Bond Fund shall be returned to the Company as an overpayment of the Note.

Whenever any Event of Default shall have occurred and be continuing which results from failure of the Company to pay to or perform for the Issuer any payment, covenant, agreement or warranty not assigned to the Trustee, the Issuer may (but need not) proceed directly against the Company and may take any action at law or in equity which it may deem necessary or desirable to collect or enforce such payment or performance in default.

**Section 7.3. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to enable the Issuer or the Trustee to exercise any remedy reserved to it herein, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.



Section 7.4. Attorneys' Fees and Expenses. Should an Event of Default occur and the Issuer or Trustee employs attorneys or incurs other expenses for the collection of sums due hereunder or under the Note or in the enforcement of performance of any other obligation of the Company hereunder or under the Note, the Company shall on demand therefor reimburse the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 7.5. Waiver of Events of Default. If the Trustee shall waive any event of default under the Note or Mortgage, and its consequences, or rescind any declaration of acceleration of payments of the principal of and interest on the Bonds, such waiver shall also waive any corresponding Event of Default hereunder and its consequences, and such rescission of a declaration of acceleration of the principal of and interest on the Bonds shall also rescind any declaration of any corresponding acceleration of all payments on the Note. In case of any such waiver or rescission, or in case any proceeding taken by the Issuer or Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Company, and the Trustee shall be restored to their former positions and rights hereunder and under the Note respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1. Term of Agreement. Subject to the provisions of Section 5.5 hereof, this Agreement shall terminate upon Payment in Full of the Bonds.

Section 8.2. Notices. Except as otherwise specifically provided herein, all notices, approvals, consents, requests and other communications hereunder shall be in writing and shall be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Company, at 7400 Lower Huntington Road, Fort Wayne, Indiana 46809, Attention: President, (b) if to the Issuer, at \_\_\_\_\_

(c) if to the Trustee, at Indiana Bank and Trust Company of Fort Wayne, 915 South Calhoun Street, P.O. Box 1204, Fort Wayne, Indiana 46802, Attention: Corporate Trust Department. A duplicate copy of each notice, approval, consent, request or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Trustee. The Issuer, the Company and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, approvals, consents, requests or other communications shall be sent or persons to whose attention the same shall be directed, but no such communications shall thereby be required to be sent to more than two addresses.

Section 8.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns, provided that any obligation of the Issuer arising hereunder shall not be a general debt of the Issuer, but shall be payable solely out of the Pledged Receipts.

Section 8.4. Severability. In the event any clause, provision or section of this Agreement, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Agreement, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder thereof or any other clause, provision or section or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken thereunder,

which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability of any application thereof affect any legal and valid and operable application thereof, from time to time, and each such clause, provision or section, covenant, stipulation, obligation, agreement, act, or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 8.5. Amounts Remaining in Bond Fund. Any amounts in the Bond Fund remaining unclaimed by the Holder for four years after the due date thereof (whether at maturity, by amortization or redemption, or otherwise) shall, at the written request of the Company, be paid to the Company by the Trustee. Any Holder which should be paid from such money shall thereafter look solely to the Company for such payment.

Section 8.6. Amendments, Changes and Modifications. Except as otherwise provided in this Agreement or in the Indenture, this Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Trustee.

Section 8.7. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.8. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

Section 8.9. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Indiana and for all purposes shall be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the Issuer and the Company have  
executed this Agreement all as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk

(SEAL)

ALLEN COUNTY AGGREGATES, INC.

By \_\_\_\_\_

EXHIBIT A  
to  
LOAN AGREEMENT  
Between  
CITY OF FORT WAYNE, INDIANA  
and  
ALLEN COUNTY AGGREGATES, INC.

THE PROJECT

The Project consists of a limestone quarry, including the Project Site itself, and all buildings, improvements, furniture, fixtures, machinery and equipment located at the Project Site. The Project includes all improvements made by the Company or its agents or employees to the Project Site in connection with the acquisition, construction or installation of such facility, and all furniture, fixtures, machinery and equipment constructed, acquired or installed by the Company or its agents or employees at the Project Site and in or around such facility.

LEGAL DESCRIPTION

Part of the Northeast Quarter, together with part of the East Half of the East Half of the Northwest Quarter, together with part of the West Half of the Southeast Quarter, together with part of the East Half of the Southeast Quarter, all being in Section 36, Township 30 North, Range 11 East, Allen County, Indiana, all being more particularly described as follows, to-wit:

Beginning at the Northwest corner of said Northeast Quarter; thence South 90 degrees 00 minutes East (assumed bearing), on and along the North line of said Northeast Quarter, being also the centerline of Yohne Road, a distance of 1628.7 feet (recorded 25 chains and 15 links which equals 1659.9 feet) to the Northwest corner of the East 60 acres of said Northeast Quarter, said corner being situated a distance of 1022.8 feet North 90 degrees 00 minutes West from the Northeast corner of said Northeast Quarter; thence South 01 degrees 55 minutes 30 seconds East, on and along the West line of said East 60 acres, being established by a partial line fence and survey monuments found, a distance of 2620.7 feet (recorded 39 chains and 44 links which equals 2603.04 feet) to the Southwest corner of said East 60 acres, being a point on the East-West Half Section line of said Section 36; thence North 89 degrees 03 minutes East, on and along said Half Section line, being established by deeded distances and survey monuments found, a distance of 486.5 feet to the point of intersection of said Half Section line with the Northwesterly right-of-way line of Lower Huntington Road; thence South 44 degrees 10 minutes West, on and along said Northwesterly right-of-way line, being established by survey monuments found, a distance of 70.9 feet to the most Easterly corner of a 2.052 acre tract conveyed to Mildred A. Pequignot in Deed Record 721, page 386, in the Office of the Recorder of Allen County, Indiana, said corner being situated 50.0 feet (measured at right angles) South of said Half Section line; thence South 89 degrees 03 minutes West, on and along the North line of said 2.052 acre tract and parallel to said Half Section line, a distance of 417.9 feet to the Northwest corner of said 2.052 acre tract; thence South 44 degrees 10 minutes West, on and along the Northwesterly line of said 2.052 acre tract and the Northwesterly line of a 1.015 acre tract conveyed to Mildred A. Pequignot in Document No. 77-12923 in the Office of the Recorder of Allen County, Indiana, and parallel to said Northwesterly right-of-way line, a distance of 305.0 feet to the most Westerly corner of said 1.015 acre tract; thence South 45 degrees 50 minutes East, on and along the Southeasterly line of said 1.015 acre tract, a distance of 295.0 feet to the most Southerly corner thereof, being a point on said Northwesterly right-of-way line; thence South 44 degrees 10 minutes West, on and along said Northwesterly right-of-way line, a distance of 475.0 feet to a rail post found at the point of intersection of said Northwesterly right-of-way line with the West line of the East Half of said Southeast Quarter; thence North 01 degrees 17 minutes West, on and along said East

line, a distance of 155.76 feet (2 chains and 36 links); thence South 89 degrees 09 minutes West, a distance of 1331.88 feet (20 chains and 18 links) to the West line of said Southeast Quarter; thence North 01 degrees 06 minutes 30 seconds West, on and along said West line, being established by a partial line fence, a distance of 651.42 feet (9 chains and 87 links) to the center of said Section 36; thence South 89 degrees 03 minutes West, on and along the East-West Half Section line of said Section 36, a distance of 82.83 feet (1 chain and 25-1/2 links); thence North 01 degrees 13 minutes West, a distance of 2649.4 feet (recorded 39 chains and 85 links which equals 2630.1 feet) to the North line of said Northwest Quarter; thence South 89 degrees 36 minutes East, on and along said North line, being also the centerline of Yohne Road, a distance of 82.83 feet (1 chain and 25-1/2 links), to the point of beginning, containing 128.931 acres of land, subject to legal right-of-way for Yohne Road and subject to legal drainage easement for Graham-McCulloch Ditch and subject to all other easements of record.

Part of the East Half of the Northwest Quarter of Section 36, Township 30 North, Range 11 East, Allen County, Indiana, more particularly described as follows, to-wit:

Beginning on the South line of said Northwest Quarter of a point situated 82.83 feet, South 89 degrees 03 minutes West of the center of said Section 36, thence South 89 degrees 03 minutes West, on and along said South line, being established by monuments found, a distance of 298.77 feet to a point on said South line which is coincident with the Northeast corner of a 14.86 acre tract conveyed to Marie J. Graves in Document No. 76-12531 in the Office of the Recorder of Allen County, Indiana; thence North 89 degrees 49 minutes West, on and along the North line of said 14.86 acre tract, a distance of 950.0 feet to a survey pipe found at the point of intersection with the North line of said 14.86 acre tract with the West line of the East Half of said Northwest Quarter; thence North 01 degrees 30 minutes West, on and along said West line, being established by survey monuments found, a distance of 2660.4 feet to a survey pin found at the Northwest corner of the East Half of said Northwest Quarter; thence South 89 degrees 36 minutes East, on and along the North line of said Northwest Quarter, being also the centerline of Yohne Road, a distance of 1262.07 feet (recorded 18 chains and 74-1/4 links which equals 1237.01 feet) to a point situated 82.83 feet, North 89 degrees 36 minutes West of the Northeast corner of said Northwest Quarter; thence South 01 degrees 13 minutes East and parallel to the East line of said Northwest Quarter, a distance of 2649.4 feet (recorded 39 chains and 85 links which equals 2630.1 feet) to the point of beginning, containing 76.550 acres of land, subject to legal right-of-way for Yohne Road, and subject to legal drainage easements for Graham-McCulloch Ditch and Robinson Ditch, and subject to an easement granted to Indiana & Michigan Electric Company in Deed Record 731, pages 67 and 68, in the Office of Recorder, and further subject to all other easements of record.

AND ALSO

17.741 acres of land, more or less, in Part of the South Half of  
Section 36, Township 30 North, Range 11 East, in Allen County,  
Indiana.



EXHIBIT B  
to  
LOAN AGREEMENT  
Between  
CITY OF FORT WAYNE, INDIANA  
and  
ALLEN COUNTY AGGREGATES, INC.

PROJECT SITE

[To be completed, see legal description attached]

Prior Deed References: \_\_\_\_\_

EXHIBIT C  
to  
LOAN AGREEMENT  
Between  
CITY OF FORT WAYNE, INDIANA  
and  
ALLEN COUNTY AGGREGATES, INC.

PROMISSORY NOTE

ALLEN COUNTY AGGREGATES, INC.

\$920,000

\_\_\_\_\_, 1981

FOR VALUE RECEIVED, Allen County Aggregates, Inc., an Indiana corporation (the "Borrower"), hereby promises to pay to the order of the City of Fort Wayne, Indiana, (the "Issuer"), a municipal corporation and political subdivision of the State of Indiana the principal sum of \$920,000, in installments and with interest as hereinafter provided.

As used herein, the terms "Bonds", "Bond Fund", "Bond Purchase Agreement", "Determination of Taxability", "Event of Taxability", "Final Maturity Date", "Guaranty Agreement", "Interest Rate for Advances", "Mortgage", "Original Principal Sum", "Original Purchaser", "Trustee", "Payment in Full of the Bonds", and "Taxable Rate of Interest" shall have the meanings assigned to them in the Bond Legislation, as such term is defined in the Loan Agreement dated as of October 1, 1981 between the Issuer and the Borrower (the "Loan Agreement").

Commencing October 30, 1981 and on the last business day of every month thereafter, principal and interest shall be payable hereon in 240 consecutive monthly installments of principal and interest. Each such installment shall include amounts in respect of repayment of principal due hereon, plus interest at twelve percent (12%) per annum on the then outstanding principal amount of the Bonds. The amounts of principal payable hereon, shall be \$3,750 per month, except for the payment due on September 30, 1986, which shall be in the amount of \$23,750, such additional amount representing the principal amount due on the Bonds maturing October 1, 1986.

Notwithstanding the foregoing, the total monthly payment due under the Loan Agreement and this Note shall include the Reserve Fund Payments required under Section 4.1(d) of the Loan Agreement, and until the sum of \$138,000 has been accumulated in the Reserve Fund, such total monthly payment shall be not less than \$\_\_\_\_\_ per month. In any event, the Original Principal Sum and interest shall be paid in full on or before the Final Maturity Date. Each installment shall be applied first to interest due and the balance to repayment of principal. Interest shall be calculated on a 360 day per year basis.

Payments of all principal, interest and premiums have been irrevocably assigned and pledged to the Trustee, without recourse, acting pursuant to a Trust Indenture, dated as of October 1, 1981 (the "Indenture"), between the Issuer and the Trustee. Such assignment is made as security for the payment of the Bonds, issued pursuant to the Indenture. All of the terms, conditions and provisions of the Indenture are, by this reference thereto, incorporated herein as a part of this Promissory Note.

Payments hereon shall be made directly to the Trustee for the account of the Issuer, in lawful money of the United States of America at the principal office of the Trustee in Fort Wayne, Indiana. Each payment hereon shall be sufficient, when aggregated with other such payments, to pay the total amount of interest, principal, and premium payable on the Bonds on the Interest Payment Date next following the due date for such payment hereon. Until Payment in Full of the Bonds, as defined in the Indenture, if at any such Interest Payment Date the balance in the Bond Fund available for the payment of principal of and premium (if any) and interest on the Bonds is insufficient under the Indenture to make such required payments on such date, the Borrower shall forthwith pay any such deficiency. All payments or prepayments of principal hereof shall be endorsed by the Trustee on the principal payment schedule attached hereto.

Time is of the essence of this Promissory Note. In the event any payment is not made when due hereunder, the Company shall pay to the Trustee, for the account of the Issuer, a "late charge" equal to 4% of such delinquent payment to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration hereof, all amounts payable as the result of such acceleration shall bear interest at the Interest Rate for Advances from the date of acceleration until paid.

This Promissory Note is the Note referred to in Section 4.1 of the Loan Agreement, and is entitled to the benefits and subject to the conditions of the Agreement. This Promissory Note is subject to prepayment as specified in the Loan Agreement and all of the terms, conditions and provisions of the Loan Agreement, the Bond Purchase Agreement and the Mortgage are by this reference thereto, incorporated herein as a part of this Promissory Note. Payment of this Promissory Note is secured by the Mortgage and the Guaranty Agreement.

Anything herein to the contrary notwithstanding, any amount at any time held by the Trustee in the Bond Fund on any Interest Payment Date and available for the payment of principal of and redemption premium (if any) and interest on the Bond on such date shall be credited against the payment due hereunder on such date, and shall reduce the payment to be made by the Borrower to the extent such amount is in excess of the amount required for payment of the Bond theretofore required to be amortized or called for redemption and past due interest. Furthermore, if the amount held by the Trustee in the Bond Fund should be sufficient under the Indenture to pay at the times required the principal of, redemption premium (if any) and interest on the Bonds then remaining unpaid, the Borrower shall not be obligated to make any further payments hereunder.

In case of an Event of Default, as defined in the Loan Agreement, the principal of and interest on this Promissory Note may be declared immediately due and payable as provided in the Loan Agreement.

Upon Payment in Full of the Bonds, this Promissory Note shall be marked "Paid in Full" and returned to the Borrower.

IN WITNESS WHEREOF, the Borrower has executed this Promissory Note as of the date first above written.

ALLEN COUNTY AGGREGATES, INC.

By \_\_\_\_\_

The above Promissory Note is hereby assigned, without recourse, to INDIANA BANK AND TRUST COMPANY OF FORT WAYNE, as Trustee, pursuant to the Indenture described in the Promissory Note.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_  
Mayor

(SEAL)

Attest: \_\_\_\_\_  
Clerk

The above assignment is hereby accepted.

INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE, Trustee

(SEAL)

By \_\_\_\_\_

AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

[illegible]

AMOUNT

DATE \_\_\_\_\_

TRUSTEE'S ENDORSEMENT

[illegible]

AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

This image shows a blank sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

[illegible]

AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

This image shows a blank sheet of white paper with horizontal ruling lines. The paper is divided into three equal-width vertical sections by two faint vertical lines. Each section contains approximately 20 horizontal lines, providing a template for writing or drawing.

AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are organized into three distinct vertical columns. Each column contains approximately 20 evenly spaced horizontal lines, providing a template for writing or drawing. The margins between the columns are uniform, and the overall layout is clean and professional.

AMOUNT

DATE \_\_\_\_\_

TRUSTEE'S ENDORSEMENT

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AMOUNT

DATE

TRUSTEE'S ENDORSEMENT

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AMOUNT

DATE \_\_\_\_\_

TRUSTEE'S ENDORSEMENT

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AMOUNT

DATE \_\_\_\_\_

TRUSTEE'S ENDORSEMENT

[illegible]

DRAFT:1043b  
9/15/81

City of Fort Wayne, Indiana

\$920,000

Economic Development First Mortgage Revenue Bonds  
(Allen County Aggregates, Inc. Project)

BOND PURCHASE AGREEMENT

October 1, 1981



BOND PURCHASE AGREEMENT

City of Fort Wayne, Indiana

\$920,000

Economic Development First Mortgage Revenue Bonds  
(Allen County Aggregates, Inc. Project)

This Agreement is made as of October 1, 1981, by and among the CITY OF FORT WAYNE, INDIANA (the "Issuer"), ALLEN COUNTY AGGREGATES, INC. (the "Company"), THE FIFTH THIRD BANK, AS TRUSTEE (the "Trustee") and \_\_\_\_\_ and THE CINCINNATI INSURANCE COMPANY (collectively the "Original Purchaser"), under the following circumstances:

A. The Issuer and the Company are entering into a Loan Agreement of even date herewith (the "Loan Agreement"), pursuant to which the Issuer agrees to issue and sell to the Original Purchaser its Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project) in the principal amount of \$920,000 (the "Bonds"), and to loan the proceeds thereof to the Company.

B. Pursuant to the Bond Legislation, as defined in the Loan Agreement, the Issuer has been authorized to execute the Loan Agreement, the Bonds, the Indenture and this Agreement.

C. The Original Purchaser is willing to purchase the Bonds upon the terms and subject to the conditions provided herein.

NOW THEREFORE, the parties hereto agree as follows:

1. Definitions. Except to the extent otherwise expressly provided in the recitals and elsewhere herein, and unless the context otherwise requires, all words and terms used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings set forth in the Loan Agreement, the Indenture, the Bond Legislation and the Mortgage, as defined in the Loan Agreement.

2. Representations and Warranties. The Issuer and the Company each make to the Trustee and the Original Purchaser their respective representations and warranties set forth in Article II of the Loan Agreement. The Cincinnati Insurance Company, represents and warrants that it is an Ohio corporation, and both The Cincinnati Insurance Company and \_\_\_\_\_ represent and warrant that they have full power and authority to enter into this Agreement and to purchase the Bonds as set forth herein and otherwise perform their obligations hereunder. The Trustee represents and warrants that it is a bank incorporated under the laws of the City of Fort Wayne, Indiana with full power and authority to enter into this Agreement and the Indenture and to perform its obligations hereunder and thereunder.

3. Purchase of Bond.

A. Subject to the Conditions to purchase and Disbursements in Section 5 hereof, the Original Purchaser offers to purchase the Bonds for a purchase price of \$920,000,

as follows: \_\_\_\_\_ will purchase the Bonds stated to mature in 1986, and The Cincinnati Insurance Company will purchase the Bonds stated to mature in 2001. Upon delivery of the Bonds to it, the Original Purchaser shall pay the aforesaid purchase price to the Trustee for deposit in the Construction Fund.

B. The Trustee shall disburse the moneys in the Construction Fund as provided in Sections 3.3 and 3.6 of the Loan Agreement, Section 5.B of this Agreement and the terms of the Indenture.

C. The terms and provisions of the Bonds, including without limitation those relating to the principal amount thereof, interest payable thereon, repayment of principal interest, and premiums (if any) and redemption shall be as set forth in the Indenture.

4. Limitation of Liability. The Bonds will be a special obligations of the Issuer and the principal of and interest and premiums (if any) on any Bonds will be payable solely from the Pledged Receipts and the Bond Fund and are not otherwise an obligation of the Issuer. The Bonds will not be secured by any obligation or pledge of any moneys raised by taxation and will not represent or constitute a debt or pledge of faith and credit of Issuer or the State of Indiana. Any obligation of the Issuer created by or arising out of this

Agreement, the Loan Agreement or the Indenture will not be a general debt on its part but will be payable solely out of Pledged Receipts.

5. Conditions to Purchase and Disbursements.

A. The duty of the Original Purchaser to purchase the Bonds is subject to receipt by the Trustee of the items mentioned in Section 2.06 of the Indenture and to receipt by the Original Purchaser of each of the following items, each such receipt being a condition precedent to such duty:

(1) The fully executed and authenticated Bonds which such Original Purchaser is purchasing.

(2) A copy of the fully executed Note duly endorsed by the Issuer to the Trustee.

(3) An original executed counterpart of the Loan Agreement.

(4) An original executed counterpart of the Mortgage.

(5) An original executed counterpart of the Guaranty Agreement.

(6) A copy of the Bond legislation duly certified by the Clerk of the Issuing Authority.

(7) An original executed counterpart of the Indenture.

(8) An original executed counterpart of a mortgage granting to the Original Purchaser a lien on approximately 360 acres of farm land with a fair market value of approximately \$2,500 per acre.

(9) Copies of the policy or policies of builder's risk insurance referred to in paragraph 5.B.6 hereof, and copies of the policies and certificates of insurance required by or pursuant to the provisions of the Mortgage; the originals of all such policies and certificates to be provided to the Trustee.

(10) Copies of the policy or policies of life insurance on certain key management personnel as required by Section 5.18 of the Loan Agreement and original executed collateral assignments of such policies to The Cincinnati Insurance Company.

(11) An opinion of counsel for the Company and the Guarantor as to the existence and good standing of the Company, as to appropriate zoning for the Project, as to the due authorization, execution, delivery and enforceability of all agreements and instruments executed and delivered by the Company and the Guarantor in connection with the issuance of the Bonds, and as to such other matters as the Original Purchaser may reasonably request, such opinion to be in form and substance satisfactory to the Original Purchaser and to Peck, Shaffer & Williams, as bond counsel.

(12) An opinion of Peck, Shaffer & Williams, as bond counsel, as to the due authorization, execution, delivery and enforceability of the Bonds and as to the tax exempt status of the interest on the Bonds under the Code, and as to such other

matters as the Original Purchaser may reasonably request, all in form and substance satisfactory to the Original Purchaser.

(13) A copy of a standard form of ALTA Mortgagee title insurance policy, or commitment therefor, issued in the name of the Trustee by a title insurance company (and local agent) satisfactory to the Original Purchaser, in an amount of not less than \$920,000, insuring the Trustee's interest under the Mortgage and the priority of the Mortgage, without survey, mechanics lien or other exceptions except such as may be approved by the Original Purchaser.

(14) A certificate from the Company as to compliance with all requirements of Section 5.B. hereof then capable of being complied with.

(15) Any and all other documents and items, including without limitation financing statements, certificates and opinions of counsel as may be required by Peck, Shaffer & Williams as bond counsel, or by the Original Purchaser.

B. The duty of the Trustee to make the initial or any subsequent disbursement ("Disbursement") from the Construction Fund is subject to satisfaction, to the extent required by the Original Purchaser, of each of the following additional conditions precedent:

(1) Disbursements need not be made more often than once every \_\_\_\_ days, each Disbursement (except the last) in respect of the Project improvements shall be in an amount not

less than \$25,000 and not more than the cost of the improvements in place for which such Disbursement is requested, and the making of any Disbursement shall not be deemed to constitute an approval or acceptance by the Original Purchaser of the work theretofore done on the Project.

(2) The Company must be in full compliance with all of the provisions of this Agreement, the Loan Agreement, the Note and the Mortgage, and be entitled to such Disbursement, it being understood that the making of any Disbursement when the Company is not so entitled will not constitute a waiver of such compliance.

(3) The Mortgage must be a valid first lien for the full amount then and theretofore advanced on a good and marketable indefeasible fee simple estate in the Project and Project Site, free and clear of all encumbrances except Permitted Encumbrances, and all of the other conditions mentioned in paragraph 5.A. hereof must be and remain fulfilled.

(4) All materials and fixtures incorporated in the construction of the Project and all Project equipment, if any, must have been purchased so that the absolute and unencumbered ownership thereof has vested in the Company immediately upon delivery thereof to the Project Site, and the Company shall have produced and furnished, if required by the Original Purchaser, the contracts, bills of sale or other agreements under which title thereto is claimed by the Company.

(5) To the extent required by law, by all governmental agencies having jurisdiction thereof; all necessary governmental licenses and permits must have been obtained and paid for; there must be no violation or alleged violation of insurance underwriters' requirements; there must be no violation or alleged violation of any applicable building, zoning or other law or ordinance nor any notice in or from any municipal or other public department that any part of the Project violates or does not comply with any provision of law or ordinance applicable thereto; the Project shall not have been condemned, destroyed or substantially damaged; and there must be no actions, suits or proceedings pending or, to the Company's knowledge, threatened against or affecting the company or the Project or any part thereof, at law or in equity, or before or by any governmental agency, which if adversely determined, would impair the ability of the Company to complete or operate the Project in accordance with the provisions hereof and of the Loan Agreement and Mortgage, or to pay when due any amounts which may become payable on the Note.

(6) Until completion of the Project, instead of the fire insurance required by the provisions of the Mortgage, there must be in full force and effect a policy or policies of the Builder's Risk-Completed Value fire and extended coverage, without co-insurance, in the amount of the full insurable value of the Project, the form and content of such policy or



policies, and the insurer or insurers, to be subject to prior approval of the Original Purchaser; as well as such other insurance as may be legally required during construction.

(7) The Original Purchaser shall have been furnished with a sworn statement of the Company and a general contractor approved by the Original Purchaser, if requested, in form and substance required by the Original Purchaser, setting forth the names, addresses and amounts due or to become due as well as the amounts previously paid to every sub-contractor, person, firm or corporation furnishing materials or performing labor entering into the construction of any of the Project.

The Project shall have been constructed under the supervision and control of the approved general contractor; the construction contract with such contractor must be in force and free from default; all amounts then payable for labor and materials with respect to construction of such improvements shall have been paid, or will be paid from such disbursement; the Original Purchaser shall have been furnished with an affidavit of the Company as to whether or not the Company or any agent of the Company has been served with any written notice that a lien will be claimed for any amounts unpaid for materials furnished or labor performed by any person, firm or corporation furnishing materials or performing labor of any kind entering into the construction of any of the Project

improvements, and the time and manner of any such service shall be stated in such affidavit with a copy of any such notice attached.

(8) The Original Purchaser shall have been furnished with a sworn statement of the Company and the general contractor (a) stating that the work with respect to which disbursements have been requested has been completed to their satisfaction and in strict accordance with the approved plans, and (b) giving in such detail as the Original Purchaser may require a certification of the cost of construction theretofore and then incurred, and an estimate of the cost of satisfactorily completing the construction of the Project, with such supporting detail as the Original Purchaser may require (including without limitation a draw schedule for the general contractor and a trades and material payment breakdown), such estimate to show that the amount to be subsequently disbursed under the Loan Agreement will be sufficient to pay such cost.

(9) To the extent required by the Original Purchaser, the Company shall have paid all fees and charges agreed to be paid and the fees, if any, for the procuring and making of the loan and the charges for the examination of the title to the Project Site, title insurance, surveys, appraisals and inspections, recording and filing fees, mortgage recording tax, cost of revenue stamps, if any, architects', engineers' and legal fees, and any other costs, fees or expenses relating to the Project or its financing.

(10) All instruments relating to each Disbursement and all proceedings taken on or prior to each Disbursement in connection with the performance of this Agreement must be satisfactory to the Original Purchaser, and the Original Purchaser shall have been timely furnished with such documents, endorsements, reports, photographs, certificates, affidavits, opinions of counsel and other information in form and substance satisfactory to the Original Purchaser, as the Original Purchaser may reasonably require to evidence priority of the Mortgage and compliance by the Company with all of the provisions of this Agreement, the Loan Agreement and the Mortgage.

(11) Neither the Company, the Guarantor nor the general contractor shall be subject to any insolvency or bankruptcy proceeding, and no assignment for the benefit of creditors shall have been made by or against the Company, the Guarantor or the general contractor, and remain pending or in effect.

(12) In the case of the final Disbursement, the Company shall have furnished to the Original Purchaser all final certificates of approval, including any required certificate of occupancy, of the various governmental authorities having jurisdiction.

(13) In the case of the final Disbursement, the acquisition, construction and installation of the Project shall have been fully completed in accordance with the plans and

specifications therefore previously delivered to the Original Purchaser, and ready for occupancy; and there shall be adequate loading and unloading facilities, together with satisfactory ingress and egress and paved parking facilities sufficient to accommodate the requirements of the business of the Company to be operated at the Project Site.

C. The Company covenants and agrees that (i) it will diligently and continuously, and with an adequate supply of labor and materials, proceed with, the acquisition, construction and completion of the Project improvements, except for periods of not more than 30 days at any one time and of not more than 60 days in the aggregate by reason of fire, strikes, acts of God or other causes beyond the control of the Company, (ii) construction of the Project improvements will be in strict accordance with the approved Plans, and such construction and materials used therein will be satisfactory to the Original Purchaser, and (iii) each statement, representation and warranty contained herein or in any certificate or other instrument at any time delivered to the Original Purchaser pursuant to this Agreement, the Loan Agreement or the Mortgage shall be true in all material respects at the time such statement, representation or warranty was made. The Company further covenants and agrees that it shall comply with, or cause to be complied with each condition to Disbursements set

forth in Section 5.B. hereof at the time of each request for Disbursement or within 10 days after demand for such compliance made by the Original Purchaser to the Company.

6. Cessation of Disbursements and Acceleration. If default should be made in the observance or performance of any of the covenants or agreement of the Company hereunder, or under the Loan Agreement or the Mortgage, then and in any such event all obligation on the part of the Trustee to approve any further Disbursements hereunder shall cease if the Trustee so elects, and the Bonds shall become due and payable at the option of the Trustee, all as provided in the Indenture. In addition, upon the occurrence of any such event, the Original Purchaser, at its option and whether or not it exercises any rights under the preceding sentence, may at any time thereafter pursuant to the terms of the Indenture direct the Trustee to take possession of the Project Site, together with all materials, equipment and improvements thereon whether affixed to the realty or not and perform any and all work and labor and purchase any and all materials necessary to complete the Project substantially according to the approved plans and to equip the same, and may employ watchmen to protect them from depredation or injury. If in violation of the provisions of the Mortgage the Company should fail to pay any taxes, assessments or water or sewer rents or charges or permit any mechanic's or other liens to be filed or remain filed against

the Project Site, the Original Purchaser may at its option pursuant to the Indenture direct the Trustee to pay the same, it being agreed that any sums so paid or expended in accordance with any of the provisions of this paragraph shall be and may at the Original Purchaser's option be deducted from any Disbursement then or thereafter becoming due or become an additional Disbursement to the Company and then be added, together with interest thereon at the Interest Rate for Advances, to the total indebtedness secured by the Mortgage. To implement the rights granted under this paragraph, the Company hereby constitutes and appoints the Trustee its true and lawful attorney-in-fact with full power of substitution in the premises to complete the Project in the name of the Company and pay all bills and expenses incurred thereby and hereby empowers the Trustee as its attorney as follows: to use any funds of the Company including any balance in the Construction Fund for the purpose of completing the Project; to make such additions and changes and corrections in the Plans as may be necessary or desirable in the opinion of the Original Purchaser to complete the Project in substantially the manner contemplated in the Plans; to employ such contractors, agents, architects and inspectors as shall be necessary or desirable in the opinion of the Original Purchaser; to pay, settle or compromise all existing bills and claims which may be or become liens against the Project Site or as may be necessary or

desirable for completion of the Project or for the clearance of title; to execute all applications, certificates or instruments in the mane of the Company which may be required by any governmental authority or contract; and to do any and every act which the Company might do in its own behalf. It is further understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest and cannot be revoked. The above mentioned attorney shall also have power to prosecute and defend all actions and proceedings in connection with the acquisition, construction and installation of the Project and to take such action and require such performance under any surety bond or other obligation or to execute in the name of the Company such further bonds or obligations as may be reasonably required in connection with the work.

The Original Purchaser shall be under no obligation to do or cause the Trustee to do any of the things provided in this Section. In connection with any action to be taken by the Trustee hereunder, the Trustee shall have each of the rights and protections provided to in the Indenture. Without limiting the generality of the foregoing, prior to taking any action hereunder, the Trustee shall be entitled to receive from the Original Purchaser such indemnities and payments as the Trustee in its sole discretion deems advisable to protect it from incurring liability and expense by reason of any such action.

7. Duties Under and Release of Mortgage. The Trustee hereby accepts and agrees to perform the duties imposed on it as assignee Grantee under the Mortgage. Upon Payment in Full of the Bonds, and upon satisfactory provision having been made for paying all other sums payable hereunder and under the Loan Agreement and the Mortgage, then and in that event the Mortgage shall cease, determine and become null and void, and the covenants, agreements and other obligations of the Company thereunder shall be discharged and satisfied, and thereupon the Trustee shall release the Mortgage, including the cancellation and discharge of the lien thereof, and shall execute and deliver to the Company such instruments in writing as shall be requisite to satisfy the lien thereof, and to enter on the records such satisfaction and discharge, and shall reconvey to the Company the estate thereby conveyed and such other instruments to evidence such release and discharge as may be reasonably required by the Company, and shall assign and deliver to the Company any property at the time subject to the lien of the Mortgage which may then be in its possession.

8. Binding Effect. This Agreement shall be binding on the parties hereto and their respective successors and assigns.



IN WITNESS WHEREOF, this Agreement has been executed  
as of the date first written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk

ALLEN COUNTY AGGREGATES, INC.

By: \_\_\_\_\_

THE INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE, AS  
TRUSTEE

By \_\_\_\_\_  
Trust Officer

ORIGINAL PURCHASER:

THE CINCINNATI INSURANCE  
COMPANY

By \_\_\_\_\_  
Vice President

DAR DRAFT: 1009b  
1010b

9/15/81

TRUST INDENTURE

Between

CITY OF FORT WAYNE, INDIANA

And

INDIANA BANK AND TRUST COMPANY OF FORT WAYNE

Trustee

\*\*\*\*\*

Securing:

\$920,000

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS

(ALLEN COUNTY AGGREGATES, INC. PROJECT)

\*\*\*\*\*

Dated as of October 1, 1981

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but is for convenience of reference only.)

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## TRUST INDENTURE

THIS TRUST INDENTURE (the "Indenture") dated as of October 1, 1981 by and between the CITY OF FORT WAYNE, INDIANA, an Indiana municipal corporation and political subdivision (the "Issuer"), and INDIANA BANK AND TRUST COMPANY OF FORT WAYNE, an Indiana banking corporation duly authorized to exercise corporate trust powers under the laws of the State of Indiana (the "Trustee"), as Trustee, is entered into under the following circumstances:

(a) By virtue of the authority of the laws of the State of Indiana, and particularly Indiana Code, Title 18, Article 6, Chapter 4.5, and pursuant to the Bond Legislation referred to below, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done by it, to issue the Bonds, as defined herein, and to use the proceeds of such Bonds to make a loan that will provide moneys for the acquisition, installation and construction of the Project, as defined herein, which Project will create or preserve jobs and employment opportunities and will improve the economic welfare of the people of the Issuer and of the State of Indiana.

(b) The Issuer has determined to issue and sell its Bonds, as defined herein, in the aggregate principal amount of \$920,000, to the Original Purchaser, as defined herein, for the purposes described above and to enter into this Indenture and secure the Bonds by the pledge and assignment of payments to be made under a Loan Agreement and Note, as defined herein, all as set forth and declared in the Bond Legislation.

(c) The Bond Legislation is incorporated herein, constitutes an integral part of this Indenture and provides in its entirety as follows:

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$920,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS (ALLEN COUNTY AGGREGATES, INC. PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO ALLEN COUNTY AGGREGATES, INC. TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT FACILITY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is a municipal corporation and political subdivision in and of the State of Indiana, and by virtue of the laws of the State of Indiana, including Indiana Code, Title 18, Article 6, Chapter 4.5, is authorized and empowered among other things (a) to make a loan for the acquisition, construction and installation of an economic development facility within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loan, and (c) to enact this Bond Legislation and execute and deliver the assignments and agreements hereinafter identified; and

WHEREAS, this Common Council has determined and does hereby confirm that the acquisition, construction and installation of the Project, as hereinafter defined, will promote the welfare of the people of the Issuer, create or preserve jobs and employment opportunities, and assist in the development of economic, manufacturing and industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount of \$920,000, will be acting in a manner consistent with and in furtherance of the provisions of Indiana Code, Title 18, Article 6, Chapter 4.5;

BE IT ORDAINED by the Common Council of the City of Fort Wayne, Indiana:

Section 1. Definitions. In addition to the words and terms defined in the recitals and elsewhere in this Bond Legislation and in the Indenture, the words and terms defined in this Section shall have the meanings herein specified unless the context or use clearly indicates another or different



meaning or intent. Those words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Agreement, as hereinafter defined.

"Act" means Indiana Code, Title 18, Article 6, Chapter 4.5 and amendments and supplements thereto such as are hereafter adopted.

"Agreement" or "Loan Agreement" means the Loan Agreement dated as of October 1, 1981 between the Issuer and the Company, and any permitted amendments or supplements thereto.

"Bonds" means the Bonds authorized in Section 3 hereof, including any Bond issued in exchange therefor as provided in the Indenture.

"Bond Fund" means the Bond principal, premium and interest fund created by Section 8 hereof.

"Bondholder" or "Holder" means, initially, the Original Purchaser, and any subsequent bearer of a coupon Bond which is not registered as to principal or the principal of which is registered to bearer, or the person in whose name a registered Bond is registered; provided that, solely as used in the definitions of "Determination of Taxability" and "Event of Taxability", the term "Bondholder" also includes the owner of an undivided participation interest in any Bond.

"Bond Legislation" means this ordinance.

"Bond Purchase Agreement" means the Bond Purchase Agreement dated as of October 1, 1981 among the Issuer, the Trustee, the Company and the Original Purchaser, and any permitted amendments or supplements thereto.

"Bond Service Charges" for any time period means the principal, including any amortization or redemption requirements, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds for such time period. Any "late charge" and any payment required to be made on the Bonds with interest at the Interest Rate for Advances shall also constitute a Bond Service Charge.

"Code" means the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder.

"Company" means Allen County Aggregates, Inc., an Indiana corporation, and its successors and assigns, including any surviving, resulting or transferee entity as provided in Section 5.14 of the Agreement.

"Completion Date" means the date of completion of the acquisition, installation and construction of the Project as that date shall be certified as provided in Section 3.5 of the Agreement.

"Construction Fund" means the fund created by Section 7 hereof.

"Coupon" or "Interest Coupon" means a coupon issued hereunder evidencing an installment of interest on a coupon Bond.

"Coupon Bond Registered as to Principal" means any coupon Bond at the time registered as to principal in the name of the Bondholder.

"Determination of Taxability" means (i) the filing by the Company or any other person or entity of any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations §1.103-10(b)(2)(vi)(c) or otherwise) which discloses that an Event of Taxability has occurred, or (ii) the final assertion by the Internal Revenue Service or any agent thereof to the effect that interest on the Bonds is includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code) or (iii) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bond to be included in the gross income for Federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code). For purposes of clause (iii) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

"Eligible Investments" means (i) any bonds or other direct obligations of the United States of America; (ii) obligations of the Federal National Mortgage Association or the Government National Mortgage Association; (iii) obligations of the Federal Intermediate Credit Banks; (iv) obligations of

Federal Banks for Cooperatives; (v) obligations of Federal Land Banks; (vi) obligations of the Federal Financing Bank; (vii) bank repurchase agreements issued by a Federal Reserve member bank, including the Trustee, fully secured by obligations of any of the kinds specified in clauses (i) through (vi) above; (viii) time deposits, certificates of deposit, documented discount notes secured by stand-by letters of credit, bank reverse repurchase agreements or bankers acceptances of banks or trust companies, including the Trustee, organized under the laws of the United States of America or any state thereof, which have combined capital and earned and unearned surplus of at least \$25,000,000 in dollars of the United States of America; (ix) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody's Investors Service, Inc., or Standard & Poor's Corporation, respectively, or their successors, or both, if rated by both; or (x) obligations, of any state of the United States of America or of any political subdivision or other instrumentality of any such state, which are rated at least "A" or its equivalent by either Moody's Investors Service, Inc., or Standard & Poor's Corporation, or their successors, or both, if rated by both.

"Event of Taxability" means the occurrence of circumstances which a Determination of Taxability shall have found to have occurred, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bond becoming includable in the gross income for Federal income tax purposes of any Bondholder (other than a Bondholder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 103 of the Code), such occurrence of circumstances relating to a specific point in time. Without limiting the generality of the foregoing, the incurring of capital expenditures in excess of those permitted under Section 103(b)(6)(D) of the Code, thereby causing any interest payable on the Bond to be includable in the gross income of any Bondholder under the Code, shall constitute an Event of Taxability.

"Executive" means the Mayor of the Issuer.

"Final Maturity Date" means October 1, 2001.

"Fiscal Officer" means the Treasurer of the Issuer.

"Indenture" means the Trust Indenture dated as of October 1, 1981, between the Issuer and the Trustee, including this Bond Legislation as a part thereof, and any permitted amendments or supplements thereto.

"Issuing Authority" means the Common Council of the Issuer.

"Interest Payment Date" means the first day of each October and April, commencing April 1, 1982 and continuing semi-annually thereafter.

"Interest Rate for Advances" means the annual rate of interest which is equal to twenty-one percent (21%); provided that in no event shall the Interest Rate for Advances exceed the rate permitted by law.

"Legal Officer" means the City Attorney of the Issuer.

"Mandatory Redemption Date" means October 1 of each year, beginning October 1, 1982.

"Mandatory Sinking Fund Requirements" means amounts required by the Bond Legislation to be deposited in the Bond Fund for the purpose of retiring, on a specified date, principal maturities of Bonds which by their terms are due and payable, if not called for prior redemption, at a subsequent date.

"Mortgage" means the Mortgage and Security Agreement dated as of October 1, 1981, whereby the Company has granted to the Trustee, as security for payment of the Note and the Bonds, a mortgage on and security interest in the Project and the Project Site, and any permitted amendments or supplements thereto.

"Note" means the Promissory Note, in the form attached as Exhibit C to the Loan Agreement, issued by the Company to the Issuer concurrent with the delivery of the Loan Agreement.

"Note Payments" means any and all payments of principal of and interest, and prepayment premiums or Additional Payments, if any, on the Note.

"Original Principal Sum" means \$920,000, the aggregate original face amount of the Bonds.

"Original Purchaser" means The Cincinnati Insurance Company, an Ohio corporation (as to the Bonds maturing October 1, 2001), and \_\_\_\_\_, an individual (as to the Bonds maturing October 1, 1986), collectively.

"Outstanding Bond" or "Bond outstanding" or "outstanding" as applied to the Bonds, means, as of any date, any Bond which has been authenticated and delivered, or is then being delivered, by the Trustee under the Indenture except:

(a) Any Bond surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Any Bond for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date with the Trustee (whether upon or prior to the Final Maturity Date or the redemption date of any such Bond), or which is deemed to have been paid and discharged pursuant to the provisions of Section 8.02 of the Indenture; provided that if such Bond is to be redeemed prior to the Final Maturity Date, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Any Bond in lieu of which another has been authenticated (or payment, when due, of which is made without replacement) under Section 2.04 of the Indenture:

and also except that

(d) For the purpose of determining whether the holders of the requisite principal amount of Bonds have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds owned by or for the account of the Company or any person owned, controlled by, under common control with or controlling the Company shall be disregarded and deemed to be not outstanding. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

"Payment in Full of the Bonds" means the first date when the Bonds are no longer deemed to be outstanding pursuant to Section 8.02 of the Indenture.

"Person" means natural persons, firms, associations, corporations and public bodies.

"Pledged Receipts" means (a) the Note Payments, (b) subject to the provisions of Sections 3.04, 4.02 and 8.02 of the Indenture with respect to the Trustee holding moneys for the benefit of any Bondholder, all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of the Agreement, to be made by the Company directly to the Issuer or the Trustee, (c) any moneys on deposit in the Construction Fund, the Bond Fund or the Reserve Fund and (d) the income and profit from the investment of any moneys while held in the Construction Fund, the Bond Fund or the Reserve Fund.

"Project" means the Project Site and the real, personal, or real and personal property, including undivided interests or other interests therein, identified in Exhibit A to the Agreement, or acquired, constructed or installed as a replacement or substitution therefor or an addition thereto, or as may result from a revision of the plans and specifications therefor in accordance with the provision of the Loan Agreement or Mortgage.

"Project Site" means the real estate and interests in real estate constituting the site of and part of the Project, as described in Exhibit B to the Agreement.

"Registered Bonds" means Bonds registered in the name of the holder, including coupon Bonds registered as to principal (except to bearer) and fully registered Bonds; and "fully registered Bonds" means Bonds without coupons registered as to both principal and interest.

"Reserve Fund" means the Reserve Fund created in Section 8(a) hereof.

"Reserve Fund Payment" means as to the Bonds, the amount payable by the Borrower to the Trustee, as determined by Section 4.1(d) of the Loan Agreement, which amount shall be deposited in the Reserve Fund and used by the Trustee as provided herein.

"State" means the State of Indiana.

"Taxable Rate of Interest" means the Interest Rate for Advances.

"Trustee" means the Trustee at the time acting as such under the Indenture, originally Indiana Bank and Trust Company of Fort Wayne, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Indenture.

Any reference herein to the Issuer, the Issuing Authority, or to any officer or official thereof, shall include those succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference to a section or provision of the Code, the Act or to a section, provision or chapter of the Indiana Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted, or shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Company under the Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, any pronoun shall be deemed to cover all genders, and the terms "herein", "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation and the Indenture and not solely the portion hereof in which any such word is used.

#### Section 2. Determination of Issuing Authority.

Pursuant to the Act, the Issuing Authority hereby finds and determines that the Project is an "economic development facility" as defined in the Act and that all actions required under the Act to be taken by the Issuer, the County of Allen, Indiana, the Trustee and the Company prior to the issuance of the Bonds have been duly authorized and completed.

Section 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Bonds in the aggregate principal amount of \$920,000 for the purpose of financing costs of acquiring, constructing and installing the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreement and the Bond Purchase Agreement. The Bonds shall be designated "Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project)".

Section 4. Terms of Bonds. The Bonds shall initially be issued in coupon or fully registered form, or both, as may be requested by the Original Purchaser thereof, shall be exchangeable for fully registered or coupon Bonds in the manner and on the terms provided in the Indenture, shall be

numbered from 1 upwards, in the case of coupon Bonds, and from R-1 upwards, in the case of fully registered Bonds, and shall be in substantially the forms set forth therefor in the Indenture.

Bonds in coupon form shall be in the denomination of \$5,000 each, shall be registrable as to principal, and shall be dated as of October 1, 1981. Bonds in fully registered form shall be in the denominations of \$5,000 and any multiple thereof, and shall be of a single maturity of the same series; provided that the Fiscal Officer with the approval of the Trustee may authorize issuance of one or more fully registered Bonds representing more than one maturity of the same series with appropriate changes in the form of such a Bond to cover more than one maturity, such approval and authorization to be evidenced as provided in the Indenture.

Each Bond in fully registered form shall be dated as of the date of its delivery or exchange; provided that if at the time of authentication of any fully registered Bond interest is in default thereon, such Bond shall be dated as of the date to which interest has been paid, and that if fully registered Bonds are initially delivered to the Original Purchaser (or any of them), such fully registered Bonds shall be dated as of October 1, 1981.

The Bonds being delivered to The Cincinnati Insurance Company, as Original Purchaser, aggregating \$900,000 in principal amount, mature October 1, 2001 and shall bear interest from their respective dates at a fixed rate of twelve percent (12%) per annum, and the Bonds being delivered to \_\_\_\_\_, as Original Purchaser, aggregating \$20,000 in principal amount, mature October 1, 1986 and shall bear interest from their respective dates at a fixed rate of twelve percent (12%) per annum as set forth in the following table. Interest on the Bonds shall be payable semiannually on April 1 and October 1 of each year, beginning April 1, 1982. Upon any transfer and surrender of the Bond in accordance with the provisions of the Indenture, the Issuer shall execute and deliver a new Bond in exchange therefor as provided in the Indenture.

Bonds maturing October 1, 2001, are subject to mandatory sinking fund redemption, by lot, without action by the Issuer, on October 1, 1982, and on each October 1 thereafter to and including October 1, 2000, in the principal amount of \$45,000 each year, at 100% of such principal amount, plus accrued interest to the redemption date.



The Bonds maturing October 1, 2001 are also subject to optional redemption, in whole or in part by lot, prior to maturity by the Issuer at the direction of the Company on October 1, 1991, or on any Interest Payment Date thereafter, in the event of exercise by the Company of its option to prepay the Note in full or in part as provided by the first paragraph of Section 6.1 of the Loan Agreement at the redemption prices (expressed as percentages of the principal amounts thereof) set forth below, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for prepayment of the Note in accordance with the provisions of such paragraph:

<u>Year</u>	<u>Principal Amount Due</u>	<u>Interest Rate(s)</u>	<u>Optional Redemption Price Commencing October 1</u>
1986	\$20,000	12%	
1991			106%
1992			105-1/2%
1993			105%
1994			104-1/2%
1995			104%
1996			103-1/2%
1997			103%
1998			102-1/2%
1999			102%
2000			101-1/2%
2001	900,000	12%	

The Bonds are also subject to optional redemption, in whole or in part, by lot, in the event of the exercise by the Company of its options to prepay the Note in whole or in part as provided by the fifth paragraph of Section 6.1 of the Loan Agreement, at a redemption price of 100% of principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date.

The Bonds shall also be callable for redemption in whole or in part by lot, upon occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Section 6.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company, (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of

the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due to a Determination of Taxability, the redemption price shall be increased by an amount equal to the difference between (a) (i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holders in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

The obligation of the Issuer to make monthly payments of principal and interest on the principal amount of the Bonds which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of the Bonds at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

Notice from the Company to the Trustee that the Note is to be prepaid in whole or in part pursuant to the Agreement shall constitute the direction of the Issuer to the Trustee to call some or all, as the case may be, of the then outstanding Bonds, and no separate notice from the Issuer to the Trustee shall be required.

When less than the entire unmatured portion of the Bonds shall be called for redemption at any time or from time to time (otherwise than pursuant to any mandatory sinking fund redemption provisions hereof) the selection of such Bonds or portions of fully registered Bonds to be called shall be made by lot by the Trustee in such manner as the Trustee may determine. When Bonds shall be called for redemption pursuant to mandatory sinking fund redemption provisions hereof, they shall be called by lot. If optional redemption of Bonds is to take place in any of the years 1991 to 2001, both inclusive, the Bonds to be so redeemed by optional redemption shall be selected prior to the selection of the Bonds to be redeemed on the same date by operation of the mandatory redemption provisions hereof.

Notice of the call for any redemption of Bonds, identifying by designation, letters, numbers, or other distinguishing marks, the Bonds (in amounts of \$5,000 or any multiple thereof) or portions of fully registered Bonds to be

redeemed, the redemption price to be paid, the date fixed for redemption and the place or places where the amounts due upon such redemption are payable, shall be given by the Trustee on behalf of the Issuer by at least two publications in a newspaper or financial journal of general circulation published in the City and State of New York, the first such publication to be not less than thirty days prior to the redemption date, and, in the case of the redemption of Bonds at the time in the form of registered Bonds, by mailing a copy of the redemption notice by first class mail at least thirty days prior to the date fixed for redemption to the registered owner of each such registered Bond to be redeemed at the address shown on the registration books kept by the Trustee; provided, however, that failure to give such notice by mailing, or any defect in such notice, shall not affect the validity of any proceedings for the redemption of the Bonds. If, because of the temporary or permanent suspension of the publication or general circulation of the appropriate newspapers or financial journals or for any other reason, it is impossible or impractical to publish such notice of call for redemption in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of notice. If all of the Bonds to be redeemed are at the time in the form of registered Bonds, notice of the call for redemption may be given by mailing a copy of the redemption notice by registered or certified mail at least thirty days prior to the date fixed for redemption to the holder or holders thereof at the address shown on the registration books kept by the Trustee and newspaper or financial journal publication of the notice of the call for redemption need not be given; provided, however, that failure to give such notice to any Bondholder by mailing, or any defects in such notice to any Bondholder, shall not affect the validity of the proceedings for the redemption of any of the other Bonds. The holder or holders of Bonds may waive any notice of redemption in writing, and in such event, no notice of any kind need be given with respect to the Bonds of such holder or holders to be so redeemed.

Bond Service Charges on Bonds in coupon form, other than principal of or any redemption premium on such Bonds registered as to principal (except to bearer), shall be payable, without deduction for services as paying agent, at the corporate trust office of the Trustee.

All Bond Service Charges on registered Bonds shall be payable by check or draft drawn upon the Trustee and mailed or delivered to the Bondholder at its address as shown on the Bond registration books to be kept by the Trustee; provided however that the final Bond Service Charges shall be payable at the

corporate trust office of the Trustee upon presentation and surrender of the Bond at such office. All payments of Bond Service Charges shall be made in lawful money of the United States of America, without deduction for services as paying agent. If any Bond Service Charges are not paid when due, the Issuer shall also pay to the Trustee, for distribution to the Bondholder, a "late charge" equal to 4% of such Bond Service Charges to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration of the Bond, the amounts payable upon such acceleration, together with interest thereon at the Interest Rate for Advances from the date of acceleration, shall continue as an obligation of the Issuer until paid. All payments from the Issuer referred to herein shall be payable solely from the Pledged Receipts.

All Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Subject to provisions of the Bond Legislation, Bonds shall be issued as coupon Bonds registrable as to principal or as fully registered Bonds, and may be exchanged as between forms, all as provided in the Indenture. All Bonds shall be negotiable instruments, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee so as to be available therefore, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to the redemption date shall be void.

The Bonds shall be executed on behalf of the Issuer by the Executive and by the Fiscal Officer, provided that any or all of such signatures may be facsimiles, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on any Bond, shall cease to be such officer before the issuance, authentication or delivery of the Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

Section 5. Security for the Bonds. As provided herein, the Bonds shall be payable solely from the Bond Fund and the Pledged Receipts and secured by a pledge of and lien on

the Pledged Receipts and the Bond Fund, and shall be further secured by the Mortgage, the Guaranty Agreement (as defined in the Loan Agreement) and the Indenture. Neither the Bond Legislation, the Bonds, the Indenture, the Loan Agreement, nor the Bond Purchase Agreement shall represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer, and each Bond shall contain on the face thereof a statement to that effect.

Section 6. Sale of Bonds. The Bonds are hereby sold and awarded to each Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price of 100% of the principal amount of the Bonds to be purchased by it, aggregating \$920,000, plus accrued interest from the date of the Bonds. The Executive and the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with each Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to such Original Purchaser, and to take all steps necessary to effect due execution, authentication and delivery to each Original Purchaser of the Bonds purchased by it under the terms of this Bond Legislation, the Indenture and the Bond Purchase Agreement. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in this Bond Legislation and the Bond Purchase Agreement, are in the best interest of the Issuer and consistent with all legal requirements.

Section 7. Allocation of Proceeds of Bond - Construction Fund. There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund in the name of the Issuer to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Construction Fund". All of the sums from the sale of the Bonds, except accrued interest on the Bonds, shall be deposited in the Construction Fund and disbursed by the Trustee in accordance with the Loan Agreement. The Trustee is authorized and directed to issue its check for each such disbursement. The moneys to the credit of the Construction Fund (including the proceeds from the sale of investments thereof) shall, pending applications thereof as above set forth, be subject to a lien and charge in favor of the Holder.

Section 8. Source of Payment - Bond Fund. As provided in the Agreement, Note Payments, sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in the Bond Fund.

There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Bond Fund". There is also hereby created two separate subaccounts in the Bond Fund, to be designated the "Principal Account" and the "Interest Account". Subject to the provisions of the Mortgage, the Bond Fund and the moneys therein are hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at stated maturity or by amortization or redemption, all as provided herein and in the Indenture and the Agreement, with Bond Service Charges representing repayment of principal on the Bonds, whether at maturity, or by mandatory or optional redemption, being paid only from the Principal Account and with Bond Service Charges representing all other amounts being paid only from the Interest Account, except as provided in Section 8.02 of the Trust Indenture relating to defeasance of the Bonds.

Except as otherwise provided in this Bond Legislation or in the Mortgage, and except for payments to be deposited into the Reserve Fund, there shall be deposited into the Bond Fund, as and when received, all Pledged Receipts, as follows: All portions of the Note Payments representing a payment of principal on the outstanding balance of the Note, all moneys from the Reserve Fund or investment of Reserve Fund moneys transferred from the Reserve Fund or otherwise credited to the Bond Fund and any other payments received by the Trustee to be used to repay principal on the Bonds, shall be deposited into the Principal Account, and all other Pledged Receipts shall be deposited into the Interest Account.

The Issuer covenants and agrees that, until Payment in Full of the Bonds, it will deposit or cause to be deposited in the Bond Fund Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholder to fully protect the rights and security of the Bondholder hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any funds other than the Bond Fund and the Construction Fund or revenues from any source other than Pledged Receipts.

The Issuer covenants and agrees, whenever the moneys and investments in the Bond Fund (or otherwise held by the Trustee for such purpose) are sufficient in amount to redeem

the entire principal amount of the Bonds then outstanding and to pay interest to accrue thereon to the date or dates of such redemption, and any applicable premiums, to take and cause to be taken, upon notification by the Company or the Trustee, the necessary steps to redeem the Bonds on the next succeeding redemption date or dates for which the required notice of call for redemption may be given.

Section 8(a). Reserve Fund. There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Reserve Fund" (hereinafter called the "Reserve Fund"). As provided in Section 4.1(d) of the Agreement, Reserve Fund Payments are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in the Reserve Fund. There shall be deposited or credited to the Reserve Fund from the Reserve Fund Payments and from all other sources, including from income earned on the investment of monies credited to such Reserve Fund, an amount equal to not more than \$138,000, which is 15% of the Original Principal Sum and the reserve reasonably required by the Original Purchaser. Until the principal amount of the Reserve Fund shall have totaled \$138,000, the Trustee shall invest the monies in such Reserve Fund as provided in Section 10 hereof and shall accumulate such income in the Reserve Fund and add such income to the principal thereof. When the amount of the Reserve Fund shall have aggregated \$138,000, the Trustee shall credit all further income received from the investment thereof to the Principal Account of the Bond Fund to pay Bond Service Charges representing repayment of principal on the Bonds, whether at maturity, or by mandatory or optional redemption, to the fullest extent possible, on the next succeeding Interest Payment Date, Mandatory Redemption Date or maturity date.

If, on any Interest Payment Date, the balance in the Bond Fund is insufficient to pay the required Bond Service Charges, then the Trustee shall immediately transfer from the Reserve Fund to the Bond Fund an amount sufficient to make up such deficiency in the Bond Fund. With the approval of the Company, which approval shall not be unreasonably withheld, the Trustee may also make withdrawals from the Reserve Fund to pay the fees and expenses of the Trustee. After any such transfer as aforesaid, the Trustee may again receive and credit Reserve Fund Payments to the Reserve Fund until the amount thereof shall again total \$138,000.

Section 9. Covenants of Issuer. In addition to other covenants of the Issuer in the Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:



(a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond Service Charges on the Bonds on the dates, at the places and in the manner provided herein and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Agreement, Bond Purchase Agreement, the Indenture and the Bonds, and required therein to be observed and performed by the Issuer. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, and to provide the security for payment of the Bond Service Charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds, and the execution and delivery of the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, have been or will be duly and effectively taken; and that the Bonds will be valid, binding and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, Indenture, the Bond Purchase Agreement, the Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision.

(c) Pledged Receipts. Except as otherwise provided in the Bond Legislation, Indenture, Bond Purchase Agreement and Agreement, the Issuer will not make any pledge or assignment of or create any lien or encumbrance upon the Construction Fund, the Bond Fund, the Reserve Fund or the Pledged Receipts, other than the pledge and assignment thereof under the Bond Legislation, Indenture and Agreement.

(d) Recordings and Filings. The Issuer will cooperate in causing all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by the Issuer to secure the Bonds, to be recorded or filed in such manner and in such places as and to the extent required by law in order to fully



preserve and protect the security of the Holder and the rights of the Trustee under the Indenture; and in pursuance thereof the Company has covenanted to cause to be delivered to the Trustee certain opinions of counsel, all as set forth in Section 5.11 of the Agreement.

(e) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all reasonable times be open to inspection by such employees, accountants or other agents of the Trustee as the Trustee may from time to time designate.

(f) Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(g) List of Bondholders. To the extent that such information shall be made known to the Issuer under the terms of this paragraph, the Issuer will keep or arrange to have kept on file at the corporate trust office of the Trustee a list of names and addresses of the last known holders of Bonds payable to bearer. Any Bondholder may in a writing addressed to the Issuer or Trustee request that his name and address be placed on said list, which request shall include a statement of the principal amount of Bonds held by such holder and shall identify, by number and series designation, such Bonds. Neither the Issuer nor the Trustee shall be under any responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Company, or by the holders (or a designated representative thereof) of twenty-five percent or more in principal amount of Bonds then outstanding, such holding and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(h) Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholder, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(i) Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Original Purchaser, so that they will not constitute arbitrage bonds under Section 103(c) of the Code and the applicable regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, or any officer of the Company, and upon receipt of satisfactory indemnities from the Company, to give an appropriate certificate on behalf of the Issuer, for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to such Section 103(c) and regulations thereunder.

Section 10. Investment of Bond Fund, Construction Fund and Reserve Fund Money. Moneys in the Bond Fund, the Reserve Fund and the Construction Fund shall be invested and reinvested by the Trustee in any Eligible Investments, in accordance with and subject to any written orders, or oral orders confirmed promptly in writing, of the Authorized Company Representative with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond Service Charges as they fall due at stated maturity or by amortization or redemption, and that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from such Fund. Subject to any such orders with respect thereto, the Trustee may from time to time sell such investments and reinvest the proceeds therefrom in Eligible Investments maturing or redeemable as aforesaid. Any such investments may be purchased from the Trustee. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purposes of paying Bond Service Charges when due as aforesaid. An investment made from moneys credited to the Bond Fund, the Reserve Fund or Construction Fund shall constitute part of that respective Fund and such respective Fund shall be credited with all proceeds of sale and income or loss from such investment, provided further that all investments of any moneys credited to the Principal Account or Interest Account of the Bond Fund shall constitute part of that respective Account, and such respective Account shall be

credited with all proceeds of sale and income or loss from such investment, subject to the restrictions set forth in Section 8(a) hereof with respect to the Reserve Fund. The Company has covenanted in the Agreement to restrict the use of the proceeds of the Bonds so that they will not constitute arbitrage bonds under the Code.

Section 11. Authorization of Agreement, Bond Purchase Agreement, Indenture and Assignment. In order to better secure the payment of the Bond Service Charges as the same shall become due and payable, the Executive and the Fiscal Officer are hereby authorized and directed to execute, acknowledge and deliver, on behalf of the Issuer, the Agreement, the Bond Purchase Agreement, the Indenture and the assignment of the Note, in substantially the forms submitted to this Issuing Authority, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the Legal Officer and by the persons executing the same. The approval of such changes by the Legal Officer and such members, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Agreement, the Bond Purchase Agreement, the Indenture and such assignment by such persons.

The Executive and Fiscal Officer and the Clerk of the Issuer are each hereby separately authorized to take any and all actions and to execute such financing statements, election statement, certificates and other instruments that may be necessary or appropriate in the opinion of the Legal Officer and bond counsel, in order to effect the issuance of the Bond and the intent of this Bond Legislation. The Clerk of the Issuer, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of the Indenture, including, without limitation, application to this Bond Legislation of the provisions in the Indenture relating to amendment, modification and supplementation, and provisions for severability.

Section 12. Effective Date. This Bond Legislation shall take effect and be in force immediately upon its adoption.

Adopted \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk

\_\_\_\_\_  
Presiding Officer

(SEAL)

Approved: \_\_\_\_\_  
Mayor

Approved as to form and  
legality: \_\_\_\_\_  
City Attorney

(End of Bond Legislation)

(Continuation of Recitals)

(d) All acts, conditions and things required to happen, exist, and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the Bonds, when issued, delivered and authenticated, a valid special obligation of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms.

(e) The Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof.

(f) The texts of the Bonds, the certificate of authentication of the Trustee to be endorsed thereon and other provisions to be included therein are to be substantially in the following forms with appropriate omissions, insertions and variations as in this Indenture provided or permitted:

Form of Coupon Bond

UNITED STATES OF AMERICA  
STATE OF INDIANA  
CITY OF FORT WAYNE

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BOND  
(ALLEN COUNTY AGGREGATES, INC. PROJECT)

No. \_\_\_\_\_

\$5,000

The City of Fort Wayne, Indiana, an Indiana municipal corporation and political subdivision (the "Issuer"), for consideration received, promises to pay to bearer, or, if this Bond be registered (other than to bearer) to the registered holder hereof, but solely from the sources and in the manner hereinafter referred to, the principal sum of

FIVE THOUSAND DOLLARS  
(\$5,000)

on the first day of October, 19/20\_\_\_\_, and to pay from such source interest thereon from the date hereof at the rate of twelve per cent (12%) per annum, payable semiannually on the first days of April and October in each year, commencing April 1, 1982, as evidenced by the coupons hereto attached, until payment of such principal sum has been made or provided for, subject to the provisions hereinafter mentioned with respect to redemption prior to maturity. Such principal, interest, and any redemption premium, other than principal of or any redemption premium on Bonds registered as to principal (except to bearer), are payable in lawful money of the United States of America, without deduction for the services of the paying agent, at the corporate trust office of the Trustee, presently Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, upon presentation and surrender of this Bond and the coupons attached hereto as they respectively mature. The principal of and any redemption premium on registered Bonds are payable only at the corporate trust office of the Trustee.

This Bond is one of a duly authorized issue of Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project) (the "Bonds") issuable under the Trust Indenture dated as of October 1, 1981 (as the same may be amended or supplemented in accordance with its terms, the "Indenture"), between the Issuer and Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, as Trustee (the term "Trustee", as used herein, refers to such Trustee or any

successor Trustee appointed pursuant to the Indenture), aggregating in principal amount \$920,000 and issued for the purpose of making a loan to assist Allen County Aggregates, Inc. (the "Company") in the financing of costs of acquiring, constructing and installing real, personal, or real and personal property, including costs incidental thereto and to the financing thereof (the "Project"), comprising an economic development facility, located within the boundaries of the County of Allen, in which the Issuer is located. The proceeds of the Bonds will be loaned to the Company pursuant to a Loan Agreement, dated as of October 1, 1981 (as the same may be amended according to its terms, the "Agreement", and the loan made pursuant to the Agreement is the "Loan"), duly made and entered into between the Issuer and the Company.

Pursuant to the Agreement, in order to provide moneys and to evidence its obligation to repay the Loan, the Company has executed and delivered to the Issuer its unconditional Promissory Note in the principal amount of \$920,000 (the "Note"). The Note has interest rate, payment and prepayment provisions corresponding to comparable provisions of the Bonds. In order to further secure the Loan, the Company has executed and delivered to the Trustee a Mortgage and Security Agreement dated as of October 1, 1981 (the "Mortgage") pertaining to the Project. Pursuant to the Indenture, the Issuer has pledged and assigned to the Trustee the "Pledged Receipts" as defined in the Indenture, and has assigned to the Trustee the Note, all as security for its obligation to pay the principal of and interest and any redemption premium on the Bonds.

The Bonds are all issued and are to be equally and ratably secured and entitled to the protection given by the Indenture, which is on file in the office of the Trustee, and reference is hereby made to the Indenture and the Agreement and to all indentures and loan agreements, respectively, supplemental thereto for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security and of the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds and coupons and the terms and conditions upon which the Bonds are issued and secured, to all of the provisions of which Indenture, each holder, by the acceptance hereof, assents.

The Bonds are issued pursuant to Indiana Code, Title 18, Article 6, Chapter 4.5, and the authorities therein mentioned and an ordinance duly adopted by the Legislative Authority of the Issuer. The Bonds, and any interest coupons attached thereto, are special obligations of the Issuer. Payment of the principal of, premium (if any) and interest on

the Bonds ("Bond Service Charges") is to be made, except to the extent made from Bond proceeds and the investment thereof, solely from the Pledged Receipts (generally, the payments and other amounts which under the Agreement are payable by the Company are to be made directly to the Trustee for the account of the Issuer in repayment of the Loan, including payments of principal of, premium (if any) and interest on the Note; all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Loan, subject to certain provisions in the Indenture with respect to the Trustee holding moneys for the benefit of the holders of particular Bonds; the proceeds of the Bonds including all moneys deposited in the Construction Fund defined in the Indenture; and the income and profit from the investment of such payments and moneys), and is secured by a pledge of and lien on the moneys deposited in the Bond Fund as established by the Indenture and hereinafter identified and a pledge and assignment of other moneys constituting said Pledged Receipts, as provided for in the Indenture. NEITHER THE BONDS, NOR THE INTEREST COUPONS APPERTAINING THERETO, NOR THE BOND LEGISLATION, THE INDENTURE, THE MORTGAGE, THE LOAN AGREEMENT NOR THE BOND PURCHASE AGREEMENT SHALL REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER OR THE STATE OF INDIANA. Payments sufficient for the prompt payment when due of the Bond Service Charges on the Bonds are required by the Agreement to be made by the Company to the Trustee for the account of the Issuer and deposited in a special account created by the Issuer and designated "City of Fort Wayne - Allen County Aggregates, Inc. Bond Fund", and have been duly pledged for that purpose.

The Bonds are issuable as coupon bonds registrable as to principal in the denomination of \$5,000 each, and as fully registered bonds in denominations of \$5,000 and any authorized multiple thereof. Coupon Bonds and fully registered Bonds are interchangeable in equal aggregate principal amounts and in authorized denominations at the aforesaid office of the Trustee, in the manner, subject to the limitations and on payment of the charges provided in the Indenture.

This Bond and appurtenant coupons are negotiable instruments. This Bond may be registered as to principal alone on the registration books of the Issuer kept by the Trustee as Bond Registrar, upon presentation hereof to the Trustee which shall make notation of such registration in the registration form printed hereon, and this Bond may thereafter be transferred only upon an assignment duly executed by the registered holder or by his attorney, in such form as shall be satisfactory to the Bond Registrar, such transfer to be made on such books and endorsed hereon. Such transfer may be to

bearer, and thereby transferability by delivery shall be restored, subject, however, to successive registrations and transfers as before. Notwithstanding the registration of this Bond as to principal alone as aforesaid, the coupons will remain payable to bearer and continue to be transferable by delivery.

The Bonds maturing October 1, 2001, are subject to mandatory sinking fund redemption, by lot, without action by the Issuer, on October 1, 1982, and on each October 1 thereafter to and including October 1, 2000, in the principal amount of \$45,000 each year, at 100% of such principal amount, plus accrued interest to the redemption date.

The Bonds maturing October 1, 2001 are also subject to optional redemption, in whole or in part by lot, prior to maturity by the Issuer at the direction of the Company on October 1, 1991, or on any Interest Payment Date thereafter, in the event of exercise by the Company of its option to prepay the Note in full or in part as provided by the first paragraph of Section 6.1 of the Loan Agreement, at the redemption prices (expressed as percentages of the principal amounts thereof) set forth below, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for the prepayment of the Note in accordance with the provisions of such paragraph:

<u>Year</u>	<u>Principal Amount Due</u>	<u>Interest Rate(s)</u>	<u>Optional Redemption Price Commencing October 1</u>
1986	\$20,000	12%	
1991			106%
1992			105-1/2%
1993			105%
1994			104-1/2%
1995			104%
1996			103-1/2%
1997			103%
1998			102-1/2%
1999			102%
2000			101-1/2%
2001	900,000 *	12%	

\* Subject to mandatory sinking fund redemption as described above.

The Bonds are also subject to optional redemption, in whole or in part, by lot, in the event of the exercise by the Company of its options to prepay the Note in whole or in part as provided by the fifth paragraph of Section 6.1 of the Loan



Agreement, at a redemption price of 100% of principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date.

The Bonds are also callable for redemption in whole or in part by lot upon the occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Section 6.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due to a Determination of Taxability, the redemption price shall be increased by an amount equal to the difference between (a) (i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holders in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

The obligation of the Issuer to make monthly payments of principal and interest on the principal amount of this Bond which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of this Bond at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

Notice from the Company to the Trustee that the Note is to be prepaid in whole or in part pursuant to the Loan Agreement shall also constitute the call by the Issuer of some or all, as the case may be, of the then outstanding Bonds, and no separate notice from the Issuer to the Trustee shall be required.

When less than the entire unmatured portion of the Bonds shall be called for redemption at any time or from time to time, otherwise than for mandatory sinking fund redemption, if any, the selection of such Bonds or portions of fully registered Bonds to be called shall be made by lot by the

Trustee in such manner as the Trustee may determine. When Bonds shall be called for redemption pursuant to mandatory sinking fund redemption provisions hereof, they shall be called by lot. If optional redemption of Bonds is to take place in any of the years 1991 to 2001, both inclusive, the Bonds to be so redeemed by optional redemption shall be selected prior to the selection of the Bonds to be redeemed on the same date by operation of the mandatory redemption provisions hereof.

Provisions have been included in the Indenture for the redemption by the Issuer of any Bonds prior to stated maturity pursuant to any mandatory or optional redemption provision under the Indenture concurrently with the prepayment by the Company of a like principal amount of the Note pursuant to corresponding mandatory or optional prepayment provisions thereof.

Rights of redemption of the Bonds shall be exercised by notice, specifying the Bonds to be called, the redemption price to be paid, the date fixed for redemption and the places where the amounts due upon such redemption are payable, which notice, subject to the provisions of the Indenture therefor, shall be published at least twice in a newspaper or financial journal of general circulation published in the City and State of New York, the first such publication to be not less than thirty days prior to the redemption date. Reference is made to the Indenture for provisions as to mailed notice of redemption with respect to registered (except to bearer) Bonds, and as to failure to give, or any defect in, such mailed notice. If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption thereof, together with interest thereon to the redemption date, shall be held by the Trustee or any paying agent so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to said date shall be void, and said Bonds and portions of fully registered Bonds and coupons shall no longer be protected by, and shall not be deemed to be outstanding under, the Indenture.

Except as provided in the Indenture, the holders or registered owners of the Bonds are not entitled to enforce the provisions of the Indenture or to institute, appear in or defend any suit, action or proceeding to enforce any provisions of the Indenture or to take any actions with respect to any event of default under the Indenture.

In addition to the provisions contained in the Indenture authorizing the Issuer and the Trustee, without the consent of or notice to any of the bondholders, to enter into

supplemental indentures not inconsistent with the Indenture and for certain purposes specified therein, the Indenture contains provisions permitting such parties, with the consent of the holders of not less than 66-2/3% in aggregate principal amount of the Bonds at the time outstanding, to execute supplemental indentures for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions of the Indenture or any indenture supplemental thereto; provided, however, that no such supplemental indenture shall (a) without the consent of the holder of each Bond so affected extend the maturity of the principal of or the interest on any Bond, reduce the principal amount of any Bond or the rate of interest or redemption premium thereon, or reduce the amount or extend the time of payment of any mandatory sinking fund requirements, or (b) without the consent of the holders of all Bonds then outstanding permit a privilege or priority of any Bond or Bonds over any other Bond or Bonds or reduce the aggregate principal amount of the Bonds required for consent to such supplemental indenture.

All Bond Service Charges or coupon Bonds shall be payable at the corporate trust office of the Trustee. All payments of Bond Service Charges shall be made in lawful money of the United States of America, without deduction for services as paying agent. If any Bond Service Charges are not paid when due, the Issuer shall also pay to the Trustee, for distribution to the Bondholder, a "late charge" equal to 4% of such Bond Service Charges to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration of the Bond, the amounts payable upon such acceleration, together with the interest thereon at the Interest Rate for advances from the date of acceleration, shall continue as an obligation of the Issuer until paid. All payments from the Issuer referred to herein shall be payable solely from the Pledged Receipts.

If an event of default, as defined in the Indenture, shall occur, the principal of this Bond then outstanding may be declared due and payable in the manner and with the effect provided by the Indenture, but subject to waiver of such event of default or rescission of such declaration as provided in the Indenture.

This Bond shall not constitute the personal obligation, either jointly or severally, of the members of the Fort Wayne Economic Development Commission or Fort Wayne Common Council, or the officers of the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to and in the issuing of this Bond in order to make it a legal, valid and binding special obligation of the Issuer in accordance with its terms, and precedent to and in the execution and delivery of the Loan Agreement, the Indenture and the Bond Purchase Agreement, have been done and performed and have happened in regular and due form as required by law, and that this Bond does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signatures of its Mayor, and Clerk, and its official seal to be impressed hereon or a facsimile thereof to be placed hereon, all as of \_\_\_\_\_, 1981.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_ (Signature)  
Mayor

Attest \_\_\_\_\_ (Signature)  
Clerk

(OFFICIAL SEAL OF  
ISSUER)

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond is the Bond described  
in the within-mentioned Indenture.

INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE,  
Trustee

By \_\_\_\_\_  
Authorized Officer

(FORM OF INTEREST COUPON)

No. \_\_\_\_\_ \$ \_\_\_\_\_

Unless the Bond described below shall have been duly called for previous redemption and payment of the redemption price duly made or provided for, on the first day of October, 19/20\_\_, the City of Fort Wayne, Indiana will pay to bearer, but solely from the sources and in the manner provided in the Trust Indenture dated as of October 1, 1981, between the said Issuer and the Trustee, on presentation and surrender of this coupon, without deduction for the services of the paying agent, at the corporate trust office of the Trustee, presently Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, the amount shown hereon in lawful money of the United States of America, being interest then due on its Economic Development First Mortgage Revenue Bond (Allen County Aggregates, Inc. Project), dated October \_\_\_, 1981, Numbered \_\_\_\_\_.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_ (Signature)  
Mayor

\_\_\_\_\_  
(Signature)  
Clerk

FORM OF REGISTRATION

Date of  
Registration

Name of Registered  
Owner

Signature of  
Bond Registrar

_____	_____	_____
_____	_____	_____
_____	_____	_____

Form of Fully Registered Bond

UNITED STATES OF AMERICA  
STATE OF INDIANA  
CITY OF FORT WAYNE

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BOND  
(ALLEN COUNTY AGGREGATES, INC. PROJECT)

No. R \_\_\_\_\_

\$ \_\_\_\_\_

The City of Fort Wayne, Indiana, an Indiana municipal corporation and political subdivision (hereinafter referred to as the "Issuer"), for consideration received, promises to pay to \_\_\_\_\_

\_\_\_\_\_, or registered assigns, but solely from the source and in the manner hereinafter referred to, the principal sum of \_\_\_\_\_

DOLLARS

on the first day of October 19/20\_\_\_\_, and to pay from said source interest thereon from the date hereof at the rate of twelve percent (12%) per annum, payable semiannually on the first day of April and October in each year, commencing April 1, 1982, until payment of such principal sum has been made or provided for, subject to the provisions hereinafter mentioned with respect to redemption prior to maturity. Such principal and interest are payable in lawful money of the United States of America, without deduction for the services of the paying agent. Principal is payable upon presentation and surrender of this Bond at the corporate trust office of the Trustee, presently Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana. Interest on this Bond shall be paid by check or draft mailed or delivered to the registered holder hereof at his address as it appears on the registration books of the Issuer.

This Bond is one of a duly authorized issue of Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project) (the "Bonds"), issuable under the Trust Indenture dated as of October 1, 1981 (supplemented in accordance with its terms, the "Indenture"), between the Issuer and Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, as Trustee (the term "Trustee", as used herein, refers to such Trustee or any successor Trustee appointed pursuant to the Indenture), aggregating in principal amount \$920,000 and issued for the purpose of making a loan to assist Allen County Aggregates, Inc. (the "Company") in the financing of costs of

acquiring, constructing and installing real, personal or real and personal property, including costs incidental thereto and to the financing thereof (the "Project"), comprising an economic development facility, located within the boundaries of the County of Allen, in which the Issuer is located. The proceeds of the Bonds will be loaned to the Company pursuant to a Loan Agreement, dated as of October 1, 1981 (as the same may be amended according to its terms, the "Agreement", and the loan made pursuant to the Agreement is hereinafter referred to as the "Loan"), duly made and entered into between the Issuer and the Company.

Pursuant to the Agreement, in order to provide moneys, and to evidence its obligation, to repay the Loan, the Company has executed and delivered to the Issuer its unconditional Promissory Note in the principal amount of \$920,000 (the "Note"). The Note has interest rate, payment and prepayment provisions corresponding to comparable provisions of the Bonds. In order to further secure the Loan, the Company has executed and delivered to the Trustee a Mortgage and Security Agreement dated as of October 1, 1981 (the "Mortgage") pertaining to the Project. Pursuant to the Indenture, the Issuer has pledged and assigned to the Trustee the "Pledged Receipts" as defined in the Indenture, and has assigned to the Trustee the Note, all as security for its obligation to pay the principal of and interest and any redemption premium on the Bonds.

The Bonds are all issued and are to be equally and ratably secured and entitled to the protection given by the Indenture, which is on file in the office of the Trustee, and reference is hereby made to the Indenture and the Agreement and to all indentures and loan agreements, respectively, supplemental thereto for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security and of the rights, duties and obligations of the Issuer, the Trustee and the holders of the Bonds and coupons and the terms and conditions upon which the Bonds are issued and secured, to all of the provisions of which Indenture, each holder, by the acceptance hereof, assents.

The Bonds are issued pursuant to Indiana Code, Title 18, Article 6, Chapter 4.5, and the authorities therein mentioned and a resolution duly adopted by the Legislative Authority of the Issuer. The Bonds, and any interest coupons attached thereto, are special obligations of the Issuer. Payment of the principal of, premium (if any) and interest on the Bonds ("Bond Service Charges") is to be made, except to the extent made from Bond proceeds and the investment thereof, solely from the Pledged Receipts (generally, the payments and

other amounts which under the Agreement are payable by the Company are to be made directly to the Trustee for the account of the Issuer in repayment of the Loan, including the payments of principal of, premium (if any) and interest on the Note; all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Loan, subject to certain provisions in the Indenture with respect to the Trustee holding moneys for the benefit of the holders of particular Bonds; the proceeds of the Bonds including all moneys deposited in the Construction Fund defined in the Indenture; and the income and profit from the investment of such payments and moneys), and is secured by a pledge of and lien on the moneys deposited in the Bond Fund as established by the Indenture and hereinafter identified and a pledge and assignment of other moneys constituting said Pledged Receipts, as provided for in the Indenture. NEITHER THE BONDS, NOR THE INTEREST COUPONS APPERTAINING THERETO, NOR THE BOND LEGISLATION, THE INDENTURE, THE MORTGAGE, THE LOAN AGREEMENT NOR THE BOND PURCHASE AGREEMENT SHALL REPRESENT OR CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OR THE TAXING POWER OF THE ISSUER OR THE STATE OF INDIANA. Payments sufficient for the prompt payment when due of the Bond Service Charges on the Bonds are required by the Agreement to be made by the Company to the Trustee for the account of the Issuer and deposited in a special account created by the Issuer and designated "City of Fort Wayne - Allen County Aggregates, Inc. Bond Fund", and have been duly pledged for that purpose.

The Bonds are issuable as coupon bonds registrable as to principal in the denomination of \$5,000 each, and as fully registered bonds in the denomination of \$5,000 and any authorized multiple thereof. Coupon Bonds and fully registered Bonds are interchangeable in equal aggregate principal amounts and in authorized denominations at the aforesaid office of the Trustee, in the manner, subject to the limitations and on payment of the charges provided in the Indenture.

This Bond is transferable by the registered holder hereof in person or by his attorney duly authorized in writing at the corporate trust office of the Trustee as Bond Registrar, upon presentation hereof to the Trustee, all subject to the terms and conditions provided in the Indenture.

The Bonds maturing October 1, 2001, are subject to mandatory sinking fund redemption, by lot, without action by the Issuer, on October 1, 1982, and on each October 1 thereafter to and including October 1, 2000, in the principal amount of \$45,000 each year, at 100% of such principal amount, plus accrued interest to the redemption date.



The Bonds maturing October 1, 1991 are also subject to optional redemption, in whole or in part by lot, prior to maturity by the Issuer at the direction of the Company on October 1, 1991, or on any Interest Payment Date thereafter, in the event of exercise by the Company of its option to prepay the Note in full or in part as provided by the first paragraph of Section 6.1 of the Loan Agreement, at the redemption prices (expressed as percentages of the principal amounts thereof) set forth below, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for prepayment of the Note in accordance with the provisions of such paragraph:

<u>Year</u>	<u>Principal Amount Due</u>	<u>Interest Rate(s)</u>	<u>Optional Redemption Price Commencing October 1</u>
1986	\$20,000	12%	106%
1991			105-1/2%
1992			105%
1993			104-1/2%
1994			104%
1995			103-1/2%
1996			103%
1997			102-1/2%
1998			102%
1999			101-1/2%
2000			
2001	900,000 *	12%	

\* Subject to mandatory sinking fund redemption as described above.

The Bonds are also subject to optional redemption, in whole or in part, by lot, in the event of the exercise by the Company of its options to prepay the Note in whole or in part as provided by the fifth paragraph of Section 6.1 of the Loan Agreement, at a redemption price of 100% of principal balance of the Bonds to be redeemed, on the date of redemption, plus accrued interest to the redemption date.

The Bonds are also callable for redemption in whole or in part, by lot upon the occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Section 6.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of the Bonds to be

redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due to a Determination of Taxability, the redemption price shall be increased by an amount equal to the difference between (a) (i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holders in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

The obligation of the Issuer to make monthly payments of principal and interest on the principal amount of this Bond which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of this Bond at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

Notice from the Company to the Trustee that the Note is to be prepaid in whole or in part pursuant to the Loan Agreement shall also constitute the call by the Issuer of some or all, as the case may be, of the then outstanding Bonds, and no separate notice from the Issuer to the Trustee shall be required.

When less than the entire unmatured portion of the Bonds shall be called for redemption at any time or from time to time, otherwise than for mandatory sinking fund redemption, if any, the selection of such Bonds or portions of fully registered Bonds to be called shall be made by lot by the Trustee in such manner as the Trustee may determine. When Bonds shall be called for redemption pursuant to mandatory sinking fund redemption provisions hereof, they shall be called by lot. If optional redemption of Bonds is to take place in any of the years 1991 to 2001, both inclusive, the Bonds to be so redeemed by optional redemption shall be selected prior to the selection of the Bonds to be redeemed on the same date by operation of the mandatory redemption provisions hereof.

Provisions have been included in the Indenture for the redemption by the Issuer of any Bonds prior to stated maturity pursuant to any mandatory or optional redemption provision under the Indenture concurrently with the prepayment by the

Company of a like principal amount of the Note pursuant to corresponding mandatory or optional prepayment provisions thereof.

Rights of redemption of the Bonds shall be exercised by notice, specifying the Bonds to be called, the redemption price to be paid, the date fixed for redemption and the places where the amounts due upon such redemption are payable, which notice, subject to the provisions of the Indenture therefor, shall be published at least twice in a newspaper or financial journal of general circulation published in the City and State of New York, the first such publication to be not less than thirty days prior to the redemption date. Reference is made to the Indenture for provisions as to mailed notice of redemption with respect to registered (except to bearer) Bonds, and as to failure to give, or any defect in, such mailed notice. If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption thereof, together with interest thereon to the redemption date, shall be held by the Trustee or any paying agent so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to said date shall be void, and said Bonds and portions of fully registered Bonds and coupons shall no longer be protected by, and shall not be deemed to be outstanding under, the Indenture.

Except as provided in the Indenture, the holders or registered owners of the Bonds are not entitled to enforce the provisions of the Indenture or to institute, appear in or defend any suit, action or proceeding to enforce any provisions of the Indenture or to take any action with respect to any event of default under the Indenture.

In addition to the provision contained in the Indenture authorizing the Issuer and the Trustee, without the consent of or notice to any of the bondholders, to enter into supplemental indentures not inconsistent with the Indenture and for certain purposes specified therein, the Indenture contains provisions permitting such parties, with the consent of the holders of not less than 66-2/3% in aggregate principal amount of the Bonds at the time outstanding, to execute supplemental indentures for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions of the Indenture or any indenture supplemental thereto; provided, however, that no such supplemental indenture shall (a) without the consent of the holder of each Bond so affected extend the maturity of the principal of or the interest on any Bond, reduce the principal amount of any Bond

or the rate of interest or redemption premium thereon, or reduce the amount or extend the time of payment of any mandatory sinking fund requirements, or (b) without the consent of the holders of all Bonds then outstanding permit a privilege or priority of any Bond or Bonds over any other Bond or Bonds or reduce the aggregate principal amount of the Bonds required for consent to such supplemental indenture.

All Bond Service Charges on registered Bonds shall be payable by check or draft drawn upon the Trustee and mailed or delivered to the Holder at its address as shown on the Bond registration books to be kept by the Trustee; provided however that the final Bond Service Charges shall be payable at the corporate trust office of the Trustee upon presentation and surrender of this Bond at such office. All payments of Bond Service Charges shall be made in lawful money of the United States of America, without deduction for services as paying agent. If any Bond Service Charges are not paid when due, the Issuer shall also pay to the Trustee, for distribution to the Bondholder, a "late charge" equal to 4% of such Bond Service Charges to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration of the Bond, the amounts payable upon such acceleration, together with the interest thereon at the Interest Rate for advances from the date of acceleration, shall continue as an obligation of the Issuer until paid. All payments from the Issuer referred to herein shall be payable solely from the Pledged Receipts.

If an event of default, as defined in the Indenture, shall occur, the principal of this Bond then outstanding may be declared due and payable in the manner and with the effect provided by the Indenture, but subject to waiver of such event of default or rescission of such declaration as provided in the Indenture.

This Bond shall not constitute the personal obligation, either jointly or severally, of the members of the Fort Wayne Economic Development Commission or Fort Wayne Common Council, or the officers of the Issuer.

This Bond shall not be entitled to any security or benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things necessary to be done or performed by the Issuer or to have happened precedent to and in the issuing of this Bond in order to make it a legal, valid and binding special obligation of the Issuer in accordance with its terms,

and precedent to and in the execution and delivery of the Loan Agreement, the Indenture and the Bond Purchase Agreement, have been done and performed and have happened in regular and due form as required by law, and that this Bond does not exceed or violate any constitutional or statutory limitation.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signatures of its Mayor and Clerk, and its official seal to be impressed hereon or a facsimile thereof to be placed hereon, all as of \_\_\_\_\_, 1981.

CITY OF FORT WAYNE, INDIANA

By \_\_\_\_\_ (Signature)  
Mayor

Attest \_\_\_\_\_ (Signature)  
Clerk

(OFFICIAL SEAL OF  
ISSUER)

(FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION)

This Bond is one of the Bonds described  
in the within-mentioned Indenture.

INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE,  
Trustee

By \_\_\_\_\_  
Authorized Officer

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and  
transfers unto \_\_\_\_\_

(Please print or typewrite name and address of transferee)  
the within bond and all rights thereunder, and hereby  
irrevocably constitutes and appoints \_\_\_\_\_ attorney to  
transfer the within bond on the books kept for registration  
thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_  
Signature \_\_\_\_\_

In the presence of: \_\_\_\_\_

NOTICE: The signature to this assignment must correspond with  
the name as it appears upon the face of the within bond in  
every particular, without alteration or enlargement or any  
change whatsoever.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in  
order to secure the payment of the Bond Service Charges on the  
Bonds according to their true intent and meaning, and to secure  
the performance and observance of all the covenants and  
conditions therein and herein contained and to declare the  
terms and conditions upon and subject to which the Bonds are  
and are intended to be issued, held, secured, and enforced, the  
Issuer, in consideration of the premises and the acceptance by  
the Trustee of the trusts hereby created and of the purchase  
and acceptance of the Bonds by the Original Purchaser, and for  
other good and valuable considerations, the receipt of which is

hereby acknowledged, has executed and delivered this Indenture and does hereby pledge and assign to Indiana Bank and Trust Company of Fort Wayne, as Trustee, and to its successors in trust, and its and their assigns, for the securing of performance of the obligations of the Issuer hereinafter set forth, all Pledged Receipts, all subject to and in accordance with this Indenture and, subject to the provisions of the Bond Legislation, all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and in any securities in which moneys in the Construction Fund or the Bond Fund are invested, and the proceeds derived therefrom, and all right, title and interest of the Issuer in and to the Note and the Agreement; provided, that the pledge and assignment of the Issuer's right, title and interest in and to the Note and the Agreement pursuant to this Indenture is intended solely for purposes of securing the Bonds, the enforcement of the payment of the principal thereof and any premium and interest thereon, when payable, according to the true intent and meaning thereof and of this Indenture, and the performance of and compliance with the covenants, terms and conditions of this Indenture, and such pledge and assignment shall not in any way (a) affect, diminish or impair the Issuer's obligations under the Agreement or impose any such obligations on the Trustee; or (b) be deemed to constitute a pledge or assignment of, or affect the collection by or receipt by the Issuer, of moneys (other than Note Payments) which, pursuant to the Agreement, are to be paid directly to the Issuer, including, without limitation, any moneys to which the Issuer may be entitled under Sections 3.4, 4.1(b) or 5.1 of the Agreement.

TO HAVE AND TO HOLD to the Trustee and its successors in said trust and to its and their assigns forever;

BUT IN TRUST, NEVERTHELESS, for the benefit, security and protection of each present and future Holder and for the enforcement of the payment of the Bond Service Charges on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture, and to secure the performance of and compliance with the covenants, terms and conditions of this Indenture; PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest due or to become due thereon together with any premium required by redemption of the Bonds prior to maturity, at the times and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or shall have caused the Bonds to have been paid and discharged in accordance with Sections 8.01 and 8.02 of this Indenture, shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and

shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

And it is expressly declared that the Bond Legislation set forth above is part of this Indenture and that the Bonds issued and secured hereunder are to be issued, authenticated and delivered and all Pledged Receipts hereby pledged and the Construction Fund and the Bond Fund are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes provided in this Indenture, and the Issuer has agreed and covenanted, and does hereby further agree and covenant, with the Trustee and with the Bondholder, as follows:



## ARTICLE I

### DEFINITIONS

In addition to the words and terms elsewhere defined, directly or by reference to the Agreement, in this Indenture, including the Bond Legislation, the following words and terms as used in this Indenture shall have the following meanings unless the context or use clearly indicates another or different meaning or intent:

"Bond Registrar" means the Trustee acting as Bond Registrar with respect to the Bond pursuant to the provisions of the Indenture.

"Extraordinary Services" and "Extraordinary Expenses" means all services rendered and all reasonable expenses properly incurred under this Indenture other than Ordinary Services and Ordinary Expenses.

"Ordinary Services" and "Ordinary Expenses" means those services normally rendered and those expenses normally incurred by a trustee under instruments similar to this Indenture.

## ARTICLE II

### FORM, EXECUTION, AUTHENTICATION, REGISTRATION AND EXCHANGE OF BONDS

Section 2.01. Form of Bonds. The Bonds, Coupons and Trustee's certificate of authentication shall be substantially in the forms set forth in the preambles to this Indenture with such omissions, insertions and variations as may be authorized or permitted by this Indenture.

Section 2.02. Execution and Authentication of Bonds. The Bonds and coupons shall be executed in the manner provided in the Bond Legislation; provided, however, that such manner of execution shall not be inconsistent with any requirements of law or of this Indenture.

The Bonds and coupons shall not be valid or become obligatory for any purpose and shall not be entitled to any security or benefit under this Indenture unless and until an authentication certificate, substantially in the form hereinabove set forth, shall have been duly endorsed upon such Bond. Such authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. Such certificate of the Trustee may be executed by any person duly authorized by the Trustee.

The Trustee shall not authenticate or deliver any coupon Bonds unless all coupons annexed thereto and then matured shall have been detached and cancelled, except as may be permitted under Sections 2.03 and 2.04 hereof.

Section 2.03. Transfer, Exchange and Registration of Bonds. Unless otherwise provided in the Bond Legislation authorizing a particular series of Bonds, the Bonds are issuable as coupon Bonds registrable as to principal and also as fully registered Bonds in the same denominations as those in which the coupon Bonds of the same series have been authorized and any integral multiple thereof requested by the Bondholder. Each fully registered Bond shall be of a single maturity of the same series; provided, however, that the Fiscal Officer with approval of the Trustee may authorize issuance of one or more fully registered Bonds representing more than one maturity of the same series with appropriate changes in the bond form to cover more than one maturity, such authorization and approval in each case to be evidenced by the facsimile or original

signature of the Fiscal Officer and authentication by the Trustee. Each fully registered Bond shall bear interest from its date and shall be dated as of the date of coupon Bonds of that series if authenticated prior to the first interest payment date for such series of Bonds, and otherwise shall be dated as of the interest payment date next preceding the date of its authentication, unless authenticated upon an interest payment date in which case it shall be dated as of the date of its authentication; provided, however, that if at the time of authentication of any fully registered Bond interest thereon is in default, such Bond shall be dated as of the date to which interest has been paid.

Unless otherwise provided in the Bond Legislation, the principal of and any premium on all registered Bonds shall be payable at the corporate trust office of the Trustee, and payment of the interest on fully registered Bonds shall be made on each Interest Payment Date to the person appearing on the registration books hereinafter provided for as the registered holder thereof, by check or draft mailed or delivered by the Trustee to such registered holder at his address as it appears on such registration books.

Coupon Bonds, upon surrender thereof at the corporate trust office of the Trustee, as Bond Registrar, with all unmatured coupons and all matured coupons in default, if any, appertaining thereto may, at the option of the holder or registered holder thereof, be exchanged for an equal aggregate principal amount of fully registered Bonds of the same series and of any denomination or denominations authorized by this Indenture and the applicable Bond Legislation and bearing interest at the same rate and maturing on the same date or dates. Printing charges for printing of coupon Bonds, and any other expenses or fees associated with preparation thereof, shall be paid by the Company.

Fully registered Bonds, upon surrender thereof at the corporate trust office of the Bond Registrar, together with an assignment duly executed by the registered holder or his duly authorized attorney in such form as shall be satisfactory to the Bond Registrar, may, at the option of the registered holder thereof, be exchanged for coupon Bonds of the same series in an aggregate principal amount equal to the unmatured and unredeemed principal amount of such fully registered Bonds, bearing interest at the same rate and maturing on the same date or dates, with coupons attached representing all unpaid interest due or to become due thereon, or for fully registered Bonds of the same series of any denomination or denominations authorized by the applicable Bond Legislation in an aggregate principal amount equal to the unmatured and unredeemed

principal amount of such fully registered Bonds, and bearing interest at the same rate and maturing on the same date or dates, or any combination of the foregoing, in each case at the expense of the Company as to printing and related costs of such exchange.

Title to any coupon Bond, unless such Bond is registered as to principal (except to bearer), and to any interest coupon shall pass by delivery. Unless otherwise provided in the applicable Bond Legislation, at the option of the holder any coupon Bond may be registered as to principal on registration books kept for that purpose at the corporate trust office of the Bond Registrar, upon presentation thereof to the Bond Registrar which shall make notation of such registration thereon. Any such Bond registered as to principal (except to bearer) may thereafter be transferred only upon an assignment duly executed by the registered holder or his duly authorized attorney in such form as shall be satisfactory to the Bond Registrar, such transfer to be made on such books and endorsed on the Bond by the Bond Registrar. Such transfer may be to bearer and thereby transferability by delivery shall be restored, subject, however, to successive registrations and transfers as before.

Any fully registered Bond may be transferred only upon the books kept for the registration and transfer of Bonds, upon surrender thereof at the corporate trust office of the Bond Registrar together with an assignment duly executed by the registered holder or his duly authorized attorney in such form as shall be satisfactory to the Bond Registrar. Upon the transfer of any such fully registered Bond and on request of the Bond Registrar, the Issuer shall execute in the name of the transferee, and the Trustee shall authenticate and deliver, a new fully registered Bond or Bonds of the same series, of any denomination or denominations permitted by this Indenture and the applicable Bond Legislation, or coupon Bonds of the same series with coupons attached representing all unpaid interest due or to become due thereon, or a combination of the foregoing, in aggregate principal amount equal to the unmatured and unredeemed principal amount of such fully registered Bond, and bearing interest at the same rate and maturing on the same date or dates.

In all cases in which Bonds shall be exchanged or fully registered Bonds shall be transferred hereunder, the Issuer shall execute and the Trustee shall authenticate and deliver Bonds in accordance with the provisions of this Indenture. Except as otherwise provided in the applicable Bond Legislation as to the series of Bonds authorized by such Legislation, the Issuer and Bond Registrar may make a charge

for every such exchange or transfer of Bonds sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such exchange or to reimburse them for all other costs and expenses incurred in connection with such exchange or transfer, and such charge or charges shall be paid before any such new Bond shall be delivered; provided, however, that if any fully registered Bonds shall have been initially delivered, in either temporary or definitive form, to the Original Purchaser of the same series of Bonds, there shall be no charge to the Original Purchaser for the exchange of such fully registered Bonds for coupon Bonds or for the exchange of temporary Bonds for definitive Bonds. Neither the Issuer nor the Bond Registrar shall be required to make any such exchange or transfer of any Bond during the ten days next preceding an Interest Payment Date on the Bonds of the same series or next preceding any selection of Bonds of the same series to be redeemed, or after such Bond has been selected for partial or complete redemption.

As to any coupon Bond registered as to principal or any fully registered Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and premium, if any, on any such Bond and the interest on any such fully registered Bond shall be made only to or upon the order of the registered holder thereof or his duly authorized attorney in such form as shall be satisfactory to the Bond Registrar, and neither the Issuer, Bond Registrar nor any Paying Agent shall be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid. The Issuer, Bond Registrar and any Paying Agent may deem and treat the bearer of any coupon Bond which shall not at the time be registered as to principal or which shall be registered as to principal to bearer, and the bearer of any coupon appertaining to any coupon Bond whether such coupon Bond shall be registered as to principal or not, as the absolute owner of such Bond or coupon, as the case may be, whether such bond or coupon shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Issuer, Bond Registrar nor any Paying Agent shall be affected by any notice to the contrary.

In case any fully registered Bond is redeemed in part only, the Issuer, on or after the redemption date and upon surrender of such Bond, shall cause execution of and the Trustee shall authenticate and deliver a new Bond or Bonds in authorized denominations and in aggregate principal amount equal to the unredeemed portion of such Bond.

So long as any of the Bonds remain outstanding, the Issuer will cause to be maintained and kept, at the corporate trust office of the Trustee as Bond Registrar, books for the aforesaid registration and transfer of Bonds except that as to any series of Bonds an additional or different Bond Registrar may be designated in the applicable Bond Legislation.

Section 2.04 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds or Coupons. In the event any temporary or definitive Bond or coupon is mutilated, lost, wrongfully taken or destroyed, the Issuer shall execute and the Trustee shall authenticate a new Bond or coupon, as the case may be, of like date, maturity and denomination as that mutilated, lost, wrongfully taken or destroyed, which new Bond, if a coupon Bond, shall have attached thereto coupons corresponding in all respects to those (if any) on the Bond mutilated, lost, wrongfully taken or destroyed; provided that, in the case of any mutilated Bond or coupon, such mutilated Bond or coupon together with, if a Bond, all coupons (if any) appertaining thereto shall first be surrendered to the Trustee, and in the case of any lost, wrongfully taken or destroyed Bond or coupon, there shall be first furnished to the Issuer, the Company and the Trustee evidence of such loss, wrongful taking or destruction satisfactory to the Fiscal Officer, the Authorized Representative of the Company and the Trustee, together with indemnity satisfactory to them. In the event such lost, wrongfully taken or destroyed Bond or coupon shall have matured, instead of issuing a new Bond or coupon the Issuer, by its Fiscal Officer, may direct the Trustee to pay the same without surrender thereof upon the furnishing of the satisfactory evidence and indemnity as in the case of issuance of a new Bond or coupon. The Issuer and the Trustee may charge the holder of such Bond with their reasonable fees and expenses in connection with their action pursuant to this Section.

Every new Bond or coupon issued pursuant to this Section shall, with respect to such Bond or coupon, constitute an additional contractual obligation of the Issuer, whether or not the lost, wrongfully taken or destroyed Bond or coupon shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds and coupons duly issued hereunder. All Bonds and coupons shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and coupons and shall preclude any and all rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.05 Safekeeping and Cancellation of Bonds.

Any Bond or any coupon surrendered for the purpose of payment or retirement, or for exchange, or for replacement or payment pursuant to Section 2.04, shall be cancelled upon surrender thereof to the Trustee, provided, however, that any coupon Bond surrendered for exchange may, at the option of the Trustee, instead of being cancelled as provided above, be held in safekeeping by the Trustee for reissuance and may be reissued in an exchange pursuant to Section 2.03 hereof, and any such Bond and coupons appertaining thereto shall, if not so reissued, be cancelled by the Trustee immediately after maturity, and certification of such cancellation shall be made to the Issuer as provided in this Section. Certification of such surrender and cancellation, and of any coupon Bonds held in safekeeping by the Trustee for reissuance pursuant to this Section, shall be made to the Issuer by the Trustee at least twice each calendar year. Unless otherwise directed by the Issuer or other lawful authority, cancelled Bonds and coupons shall promptly be destroyed by shredding or cremation by the Trustee, and certificates of such destruction (describing the manner thereof) provided by the Trustee to the Issuer.

Section 2.06. Delivery of the Bonds. Upon the execution and delivery of this Indenture and subject to the provisions of the Bond Legislation and the Bond Purchase Agreement, the Issuer shall execute and deliver the Bonds to the Trustee, and the Trustee shall authenticate and deliver them to, or for the account of, the Original Purchaser as may be directed by the Issuer as hereinafter in this Section 2.06 provided.

Prior to the delivery by the Trustee of any of the Bonds there shall be filed with the Trustee:

1. A copy, duly certified by the Clerk of the Issuing Authority, of the Bond Legislation authorizing the issuance and sale of the Bonds and the execution and delivery of the Agreement, the Indenture and the Bond Purchase Agreement, and an opinion of counsel for the Company addressed to the Trustee that the Company has duly authorized the execution and delivery of the Agreement, the Mortgage, the Bond Purchase Agreement and the Note.

2. The original executed Note and the original executed assignment thereof from the Issuer to the Trustee.

3. Original executed counterparts of the Indenture, the Agreement, the Bond Purchase Agreement and the Mortgage.

4. A request and authorization to the Trustee on behalf of the Issuer, signed by the Executive or the Fiscal Officer, to authenticate and deliver the Bond to, or on the order of, the Original Purchaser.

5. Such other documents or proceedings as shall reasonably be required by nationally recognized bond counsel satisfactory to the Trustee.



## ARTICLE III

### REDEMPTION OF BONDS

Section 3.01. Privilege of Redemption and Redemption Price. The Bonds shall be subject to redemption prior to maturity at such times, to the extent and in the manner provided in the Bond Legislation, all subject to this Indenture.

Section 3.02 Issuer's Election to Redeem. The Issuer, except in the case of redemption pursuant to any mandatory sinking fund requirements or pursuant to other mandatory redemption provisions provided in the Bond Legislation, shall give written notice to the Trustee of its election to redeem in the manner provided in and in accordance with the applicable Bond Legislation, of the places where the amounts due upon such redemption are payable, and of the redemption date and of the principal amount of each maturity of each series of redeemable Bonds to be redeemed, which notice shall be given at least forty-five days prior to the redemption date or such shorter period as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as in Section 3.03 provided, the Issuer shall, and hereby covenants that it will on or prior to the redemption date, if sufficient funds shall have been provided for the purpose by the Company under the Agreement, pay or cause to be paid to the Trustee an amount in cash which, in addition to other moneys, if any, available therefor held by the Trustee, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the redeemable Bonds which the Issuer has so elected to redeem.

Section 3.03 Notice of Redemption. When the Trustee shall receive notice from the Issuer of its election to redeem Bonds, or in order to carry out any mandatory sinking fund requirements or other mandatory redemption provisions of any Bond Legislation, the Trustee shall give notice of call for redemption as provided for in the Bond Legislation, unless such notice shall have been waived (if permitted by the applicable Bond Legislation).

Section 3.04 Payment of Redeemed Bonds. Notice having been given or waived in the manner provided in Section 3.03, the Bonds (and portions of fully registered Bonds) so called for redemption shall become due and payable on the redemption date at the redemption price, plus interest accrued to the redemption date, and, upon presentation and surrender thereof, together with all appurtenant coupons maturing on or

subsequent to the redemption date, at the place or places specified in such notice, such Bonds (and portions of fully registered Bonds) shall be paid at the redemption price plus interest accrued to the redemption date not represented by matured coupons. All interest installments represented by coupons which shall have matured on or prior to the redemption date shall continue to be payable to the bearers of such coupons. If, on the redemption date, moneys for the redemption of all such Bonds (and portions of fully registered Bonds) to be redeemed, together with interest to the redemption date, are held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given or waived as aforesaid, then, from and after the redemption date such Bonds (and portions of fully registered Bonds) so called for redemption shall cease to bear interest and all appurtenant coupons maturing subsequent to the redemption date, shall be void, and said Bonds (and portions of fully registered Bonds) and coupons shall no longer be considered as outstanding hereunder. If said moneys shall not be so available on the redemption date, such Bonds (and portions of fully registered Bonds) shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

All moneys deposited in the Bond Fund and held by the Trustee for the redemption of particular Bonds shall be held in trust for the account of the holders thereof and shall be paid to them respectively upon presentation and surrender of such Bonds and any appurtenant coupons.

#### ARTICLE IV

##### FURTHER PROVISIONS AS TO FUNDS, PAYMENTS, PROJECT AND AGREEMENT

Section 4.01. Provisions for Payment. The Issuer hereby authorizes and directs the Trustee to cause withdrawal of sufficient funds from the Bond Fund available for such purpose to pay the Bond Service Charges on the Bonds as the same become due and payable (whether at stated maturity, by amortization, by acceleration or by redemption) for the purposes of paying such Bond Service Charges, which authorization and direction the Trustee hereby accepts.

Section 4.02 Non-presentment of Bonds or Coupons. In the event any Bond shall not be presented for payment when the principal thereof becomes due, whether at maturity, at the date fixed for redemption thereof, or otherwise, or in the event any coupon shall not be presented for payment at the due date thereof, if funds sufficient to pay such Bond or coupon shall have been made available to the Trustee for the benefit of the holder or holders thereof, all liability of the Issuer to the holder thereof for the payment of such Bond or coupon, as the case may be, shall thereupon cease and be completely discharged, and it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, in a separate account in the Bond Fund for the benefit of the holder of such Bond, or the holder of such coupon, as the case may be, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond or coupon; provided that any funds which shall be so held by the Trustee and which remain unclaimed by the holder of the Bond or coupon not presented for payment for a period of three years after such due date thereof, shall be paid to the Company free of any trust or lien and thereafter the holder of such Bond or coupon shall look only to the Company for payment and then only to the amounts so received by the Company without any interest thereon, and the Trustee shall have no further responsibility with respect to such moneys.

Section 4.03 Extension of Payment of Bonds and Coupons. The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any of the coupons or claims for interest, by the purchase or funding of such Bonds, coupons or claims for interest or by any other arrangement, and in case the maturity of any of the Bonds or the time for payment of any

such coupons or claims for interest shall be extended, such Bonds, coupons or claims for interest shall not be entitled in case of any event of default under this Indenture to the benefit of the Indenture or to any payment out of the funds (except funds held for the payment of particular Bonds, coupons or claims for interest pursuant to this Indenture held by the Trustee) except subject to the prior payment of the principal of all Bonds issued and outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Bonds as shall not be represented by such extended coupons or claims for interest. Nothing herein shall be deemed to limit the right of the Issuer to issue any duly authorized refunding Bonds and such issuance shall not be deemed to constitute an extension of maturity of Bonds.

Section 4.04. Payments to Trustee. Pursuant to the provisions of the Agreement, the Company has agreed to pay to the Trustee, until Payment in Full of the Bonds, the reasonable fees, charges and expenses of the Trustee, as Trustee (for Ordinary and Extraordinary Services and Expenses) and Bond Registrar and paying agent as and when the same become due; provided, that the Company may, without creating a default thereunder, contest in good faith the necessity for any such Extraordinary Services and Extraordinary Expenses and the reasonableness of any such fees, charges or expenses. The initial or acceptance fees of the Trustee which may become due and payable during the Construction Period (as defined in the Agreement), may be paid by the Trustee from the Construction Fund as and when the same shall become due and payable.

Section 4.05. Moneys to be Held in Trust. All moneys required or permitted to be deposited with or paid to the Trustee under any provision of this Indenture or the Agreement, and any investments thereof, shall be held by the Trustee in trust and, except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, and except for moneys held by the Trustee pursuant to Section 4.02 hereof, shall, while held by the Trustee, be subject to the lien hereof.

Section 4.06 Repayment to the Company from the Bond Fund. Except as provided in Section 4.02 of this Indenture and subject to the provisions of the Agreement and the Mortgage, any amounts remaining in the Bond Fund, after all of the outstanding Bonds and coupons appertaining thereto shall be deemed to have been paid and discharged under the provisions of this Indenture, and the fees, charges and expenses of the Trustee and the Issuer and all other amounts required to be paid under this Indenture and the Agreement shall have been paid or provided for, shall be paid to the Company upon the expiration or sooner termination of the Agreement.

Section 4.07. Records of Construction Fund. The Trustee shall cause to be kept and maintained adequate records pertaining to the Construction Fund and all deposits therein and disbursements therefrom. After the Project has been completed and the certificate provided in Section 4.08 hereof has been filed, the Trustee shall, if requested by the Issuer or the Company, file an accounting thereof with the Issuer and with the Company.

Section 4.08. Completion of the Project. The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate with respect to the Project required by Section 3.5 of the Agreement. As soon as practicable after such certificate is filed with the Trustee, any balance remaining in the Construction Fund shall be applied in accordance with the provisions of Section 3.3 of the Agreement.

Section 4.09. Amendments to Note or Agreement Not Requiring Consent of Bondholder. The Issuer and the Trustee shall, without the consent or notice to the Bondholder, consent to any amendment, change or modification of the Note or the Agreement as may be required (i) by the provisions of the Note or the Agreement and this Indenture, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Note or the Agreement, or (iii) in connection with any other change therein which, in the judgment of the Issuer and the Trustee, is not to the prejudice of the Issuer, the Trustee or the Bondholders.

Section 4.10 Amendments to Note or Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 4.09 hereof, neither the Issuer nor the Trustee shall consent to (i) any amendment, change or modification of the Note Agreement which would change the Note Payments without publication of notice as provided in this Section of such proposed amendment, change or modification and the written approval or consent thereto of the holders of all of the then outstanding Bonds, or (ii) any other amendment, change or modification of the Note or Agreement without publication of notice as provided in this Section of such proposed amendment, change or modification and the written approval or consent thereto of the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding. Such approval or consent of the Bondholders shall be procured as provided in Section 7.02 hereof with respect to supplemental indentures. If at any time the Issuer and the Company shall request the consent of the Trustee to any such proposed amendment, change or modification of the Agreement as provided in clause (i) or (ii) of the first sentence of this

Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be published in the same manner as provided by Section 7.02 hereof with respect to notice of supplemental indentures, which notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the corporate trust office of the Trustee for inspection by all Bondholders.

Section 4.11 Subordination to Rights of the Company.

As provided in Section 7.2 of the Agreement, this Indenture and the assignments and pledges hereunder are subject and subordinate to the rights of the Company under the Agreement.

## ARTICLE V

### THE TRUSTEE

Section 5.01. Trustee's Acceptance and Responsibilities. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform the trusts hereunder and its obligations under this Indenture and the Agreement as an ordinarily prudent corporate trustee under a trust agreement, but only upon and subject to the following express terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees and shall be entitled to advice of counsel and independent experts of nationally recognized standing ("experts") concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, experts, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney (who may be the attorney or attorneys for the Issuer or the Company) or any expert, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or not taken in good faith in reliance upon such opinion or advice, or for any default or neglect of such attorney, expert or receiver employed and selected by it with reasonable care.

(b) Except for its certificate of authentication on the Bond, the Trustee shall not be responsible for any recital herein or in the Bond, or for the validity, priority, recording or rerecording, filing or re-filing of this Indenture, the Mortgage, the Bond Purchase Agreement or the Agreement or any financing statements, amendments thereto or continuation statements, or insuring the Project for the validity of the execution by the Issuer of this Indenture, the Bond Purchase Agreement or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Company under the Agreement, Mortgage or the Bond Purchase Agreement; but the Trustee may require of the Issuer or the

Company full information and advice as to the performance of such covenants, conditions and agreements. Except as otherwise provided in Section 6.03 hereof, the Trustee shall have no obligation to perform any of the duties of the Issuer under the Agreement.

(c) The Trustee shall not be accountable for the application of the proceeds of any Bonds authenticated or delivered hereunder which has been made by or on behalf of the Company or the Issuer.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bonds, shall be conclusive and binding upon all future holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by an authorized officer thereof as sufficient evidence of the facts therein contained, and, prior to the occurrence of a default of which the Trustee has been notified as provided in paragraph (g) of this Section, or of which by said paragraph it is deemed to have notice, shall also be entitled to rely upon a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion obtain such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of an officer, or an assistant thereto, having charge of the appropriate records to the effect that legislation or any resolution in the form therein set forth has been adopted by the Issuing Authority or a certificate of the authorized representative of the Company to the effect that a resolution in the form therein set forth has been adopted by the partners of the Company, as conclusive evidence that such legislation or resolution has been duly adopted and is in full force and effect. With respect to any action or authorization by the Company, the Trustee may accept as conclusive evidence thereof any certificate of the Authorized Company Representative or the Company.



(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder, except events of default described in paragraphs (a) and (b) of Section 6.01 hereof, unless the Trustee shall be specifically notified by writing delivered to its corporate trust department of such default by the Issuer or the Company or by the holders of at least twenty-five percent in aggregate principal amount of Bonds then outstanding, and in the absence of such notice so delivered to the corporate trust department of the Trustee, the Trustee may conclusively assume there is no default except as aforesaid. No notice or information received by any other department of the Trustee or by the Trustee in any other manner shall be imputed to the Trustee's corporate trust department.

(h) The Trustee shall not be personally liable for any debts contracted, or for injury or damage to persons or to personal property, or for salaries or nonfulfillment of contracts, relating to the Project.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect the Project and any and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to make copies of and take such memoranda from and in regard thereto as may be desired. Nothing in this Section shall require the Company to permit access to the Project of any person who is an officer, employee, servant, principal or agent of, or is acting on behalf of or in the interests of, a competitor of the Company.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of this Indenture.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that

by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Before taking action under Article VI or Section 5.04 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default by reason of any action so taken.

(m) Unless otherwise provided herein, all moneys received by the Trustee under this Indenture shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or by law. The Trustee shall not be under any liability for interest on any moneys received hereunder except such as may be agreed upon with the Issuer or the Company.

(n) The Trustee shall not be liable for any error of judgment made in good faith by a responsible officer (but neither the Issuer nor the Company waives any claim it may have against such responsible officer), unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(o) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in principal amount of the outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; and

(p) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

#### Section 5.02. Fees, Charges and Expenses of Trustee.

Subject to the provisions of Section 4.04 hereof, the Trustee shall be entitled to payment and/or reimbursement for reasonable fees for its Ordinary Services rendered hereunder and all advances, counsel fees and other Ordinary Expenses reasonably and necessarily made or incurred by the Trustee in connection with such Ordinary Services and, in the event that it should become necessary that the Trustee perform Extraordinary Services, it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable and necessary Extraordinary Expenses in connection therewith; provided, that if such Extraordinary Services or Extraordinary Expenses are occasioned by the neglect or misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall also be entitled to payment and reimbursement, but only from the Construction Fund or from the additional payments by the Company pursuant to Section 4.1(c) of the Agreement or from Pledged Receipts available therefor, for its reasonable fees and charges as Paying Agent.

#### Section 5.03 Notice to Bondholders if Default

Occurs. If a default occurs of which the Trustee has, pursuant to this Indenture, notice, then the Trustee shall give written notice thereof to the last known holders of all Bonds then outstanding as shown by the list of Bondholders required by the terms of Section 9(g) of the Bond Legislation authorizing the Bonds to be kept at the office of the Trustee and by the registration books maintained pursuant to Section 2.04 hereof.

#### Section 5.04 Intervention by Trustee.

In any judicial proceeding to which the Issuer or the Company is a party and which in the opinion of the Trustee and its attorney has a substantial bearing on the interest of holders of the Bonds, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the holders of at least twenty-five percent in the aggregate principal amount of Bonds then outstanding.

#### Section 5.05. Successor Trustee.

Any corporation or association into which the Trustee may be converted or merged, or with which it or any successor to it may be consolidated, or to which it may sell or transfer its assets and trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, *ipso facto*, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate hereunder and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor,

without the execution or filing of any instrument or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that any such successor Trustee shall be a trust company, a bank or a banking association authorized to exercise corporate trust powers within the State and having a reported capital and earned and unearned surplus of not less than \$25,000,000.

Section 5.06 Resignation by the Trustee. The Trustee may at any time resign from the trusts hereby created by giving sixty days' written notice thereof to the Issuer and to the Company and to the Original Purchaser of each series of Bonds then outstanding, and by publishing such notice at least once in the same manner as provided for in the Bond Legislation for the Bonds for publication of notice of call for redemption, not less than forty-five days before such resignation is to take effect, and such resignation shall take effect at the appointment of a successor Trustee by the Bondholders or by the Issuer and acceptance by the successor Trustee of such trusts.

Section 5.07 Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, to the Issuer, and to the Company and signed by or on behalf of the holders of not less than one-half in aggregate principal amount of Bonds then outstanding.

Section 5.08. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the Issuer with the written consent of the Company; provided that if a successor Trustee is not so appointed within ten days after notice of resignation is mailed or instrument of removal is delivered as provided in Sections 5.06 and 5.07, respectively, or the Trustee is dissolved, taken under control or otherwise incapable of action as above provided, then the Bondholder, by an instrument in writing signed by or on behalf of such Bondholder, may designate a successor Trustee. Every such successor Trustee appointed pursuant to the provisions of this Section shall be a trust company, a bank or a banking association authorized to exercise corporate trust powers within the State, having a reported capital and earned and unearned surplus of not less than \$25,000,000 and willing to accept the trusteeship under the terms and conditions of this Indenture, provided that such successor Trustee may have a reported capital and earned and unearned surplus less than \$25,000,000 if such Bondholder is

unable, after reasonable efforts, to secure a successor Trustee with reported capital and earned and unearned surplus of at least \$25,000,000.

Section 5.09. Concerning Any Successor Trustee.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer and the Company, an instrument in writing accepting such appointment hereunder, and thereupon such successor without any further act shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of its successor or the Issuer, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and shall duly assign, transfer and deliver all property, securities and moneys held by it as Trustee to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

Section 5.10. Successor Trustee as Custodian of Funds, Bond Registrar and Paying Agent. In the event of a change in the office of Trustee, the predecessor Trustee which has resigned or been removed shall cease to be custodian of any funds it may hold pursuant to the Indenture, and cease to be Bond Registrar and paying agent for any of the Bonds, and the successor Trustee shall become such custodian, Bond Registrar and paying agent.

Section 5.11. Adoption of Authentication. In case any of the Bonds contemplated to be issued hereunder shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of the original Trustee or of any successor of it as Trustee hereunder and deliver such Bonds so authenticated as hereinbefore provided; and in case any of such Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds either in the name of any predecessor or in its own name. In all such cases such certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the Trustee.

Section 5.12. Trustee Protected in Relying Upon Instruments. Legislation, resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and

conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

Section 5.13. Dealing in Bonds. The Trustee and any of its directors, officers, employees or agents, may in good faith become the owner of Bonds and coupons secured hereby, or any participation interest therein, with the same rights which it or they would have hereunder if the Trustee were not such.

## ARTICLE VI

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDER

Section 6.01. Defaults; Events of Default. If any of the following events occur, subject to the provisions of Section 6.10 hereof, it is hereby defined as and declared to be and to constitute an "event of default" hereunder:

(a) Failure to pay any interest on any Bond when and as the same shall have become due and payable.

(b) Failure to pay the principal of or any premium on any Bond when and as the same shall become due and payable, whether at stated maturity or by amortization, acceleration or mandatory or optional redemption.

(c) Failure by the Issuer to perform or observe any other covenant, agreement or condition on the part of the Issuer contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, postage prepaid, return receipt requested, to the Issuer and the Company specifying the failure and requiring the same to be remedied, which notice may be given by the Trustee in its discretion and which notice shall be given by the Trustee at the written request of the holders of not less than twenty-five percent in aggregate principal amount of the Bonds then outstanding.

(d) The occurrence of an Event of Default as defined in Section 7.1 of the Agreement.

If any event of default shall occur, the Trustee shall within five days after knowledge of such failure, give written notice, by registered or certified mail, of such event of default to the Issuer, the Company and the Bondholder.

Section 6.02. Acceleration. Upon the occurrence of any event of default as defined in paragraphs (a) and (b) in Section 6.01 hereof, the Trustee shall, and upon the occurrence of any other event of default defined in said Section 6.01, the Trustee may and upon the written request of the holders of a majority in aggregate principal amount of the Bonds then outstanding shall, except if prohibited by law, (a) by notice in writing delivered to the Issuer, declare the principal of all Bonds then outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately,

and, upon said declaration, such principal and interest shall become and be immediately due and payable and (b) on behalf of the Issuer declare all Note Payments to be immediately due and payable pursuant to Section 7.2(a) of the Agreement. Pursuant to such declaration, interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Bondholder pursuant to such declaration, or to the date such tender of payment is actually made in full, whichever is later.

The provisions of the above paragraph are subject to the condition that if, at any time after such principal and interest shall have been so declared due and payable and prior to (a) the entry of a judgment in a court of law or equity for enforcement hereunder or (b) the appointment, and the confirmation thereof, of a receiver after an opportunity for hearing by the Issuer and Company, all sums payable hereunder except the principal of, and interest accrued after the next preceding Interest Payment Date on, the Bonds which is due and payable solely by reason of such declaration shall have been duly paid or provided for by deposit with the Trustee, and all existing defaults shall have been made good, including without limitation reasonable fees, charges and expenses of the Trustee and its counsel and of the Original Purchaser, and including reasonable attorney's fees paid or incurred by the Issuer, shall have been paid, then and in every such case such payment or provisions for payment shall ipso facto constitute a waiver of such default and its consequences and an automatic rescission and annulment of such declaration under the above paragraph, but no such waiver or rescission shall extend to or affect any subsequent event of default or impair any rights consequent thereon.

#### Section 6.03. Other Remedies; Rights of Bondholders.

Upon the happening and continuance of an event of default the Trustee may, with or without taking action under Section 6.02 hereof, pursue any available remedy, including without limitation any remedy provided for in the Mortgage or the Bond Purchase Agreement, or any action at law or in equity to enforce the payment of Bond Service Charges or to remedy any event of default.

Upon the happening and continuance of an event of default, and if requested so to do by the holders of at least a majority in aggregate principal amount of the Bonds then outstanding and indemnified as provided in Section 5.01 hereof, the Trustee shall exercise such of the rights and powers conferred by this Section and by Section 6.02 as the Trustee, being advised by counsel, shall deem most effective to enforce and protect the interests of the Bondholders.



No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

Section 6.04. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the holders of a majority in aggregate principal amount of the Bonds then outstanding shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided that the Trustee shall be indemnified to its satisfaction.

Section 6.05. Appointment of Receivers. Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Pledged Receipts, pending such proceedings, with such power as the court making such appointment shall confer.

On the occurrence of an event of default, to the extent such rights may then lawfully be waived, neither the Issuer, nor the Company, nor anyone claiming through or under either of them, shall set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent it may lawfully do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled.

Section 6.06. Application of Moneys. All moneys received by the Trustee or a receiver pursuant to any right given or action taken under the provisions of this Article shall, subject to any provision made pursuant to Sections 3.04 or 4.02 hereof, and subject to the provisions of the Mortgage, after payment of the fees, charges, costs, expenses, liabilities and advances incurred by the Trustee or receiver, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the entire principal of the Bonds shall have become or have been declared due and payable, all such moneys shall be applied:

First--To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and beginning with the earliest such maturity and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege except as to any difference in the respective rates of interest specified in the Bonds; and

Second--To the payment to the persons entitled thereto of the unpaid principal of and premium (if any) on the Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture) whether at maturity, by amortization or by call for redemption, in the order of their due dates and beginning with the earliest such due date, with interest from the respective dates upon which such principal and premiums became due, and if the amount available shall not be sufficient to pay

in full all principal and premiums due on any particular date, together with such interest, then to the payment thereof ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege.

(b) If the entire principal of the Bonds shall have become due or shall have been declared due and payable pursuant to this Article, all such moneys shall be applied to the payment of the principal, premium and interest then due and unpaid upon the Bonds, without preference or priority of principal and premium over interest or of interest over principal and premium, or of any installment of interest, over any other installment of interest, or of any principal and premium over any other principal and premium, ratably, according to the amounts due respectively for principal, premium and interest, to the persons entitled thereto without any discrimination or privilege, except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable pursuant to this Article, and if such declaration shall thereafter have been rescinded and annulled under the provisions of Sections 6.02 or 6.10 hereof, then, subject to the provisions of paragraph (b) of this Section in the event that the entire principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall give notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid coupon or any Bond until such coupon or Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

The provisions of this Section are in all respects subject to the provisions of Sections 4.02, 4.03 and 4.06 hereof.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all fees, expenses and charges of the Trustee and Paying Agents and all other expenses payable under the Indenture have been paid, any balance remaining in the Bond Fund shall be paid as provided in Section 4.06 hereof.

Section 6.07. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under the Bonds or coupons may be enforced by the Trustee without the possession of the Bonds or coupons or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining any Bondholders as plaintiffs or defendants, and any recovery of judgment shall be for the benefit of the Bondholders, subject, however, to the provisions of this Indenture.

Section 6.08 Rights and Remedies of Bondholders. No holder of any Bond or coupon shall have any right to institute any suit, action or proceeding for the enforcement of this Indenture or for the execution of any power or trust thereof or for the appointment of a receiver or any other remedy hereunder, unless an event of default hereunder has occurred and is continuing, of which the Trustee has been notified as provided in Section 5.01(g), or of which by said paragraph it is deemed to have notice, and the holders of at least a majority in aggregate principal amount of Bonds then outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the powers or trusts hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in Section 5.01, and the Trustee shall thereafter fail or refuse to exercise the powers or trusts hereinbefore granted or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds or coupons shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its,

his, or their action or to enforce any right hereunder except in the manner herein provided and that proceedings shall be instituted, had and maintained in the manner herein provided and for the benefit of the holders and owners of all Bonds then outstanding. Subject to the foregoing, each Bondholder shall have a right of action to enforce the payment of the principal of and interest on any Bond held or owned by him at and after the maturity thereof at the place, from the sources and in the manner in such Bond expressed.

Section 6.09. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue unimpaired as before.

Section 6.10. Waivers of Events of Default. At any time the Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal, and shall do so upon the written request of the holders of (1) at least a majority in aggregate principal amount of all the Bonds then outstanding in respect of which an event of default in the payment of Bond service charges exists, or (2) at least 25% in aggregate principal amount of all Bonds then outstanding in case of any other event of default; provided, however, that there shall not be waived any event of default in the payment of principal, premium or interest or any such declaration in connection therewith rescinded, unless at the time of such waiver or rescission payments of all amounts payable under the Indenture (except the principal of, and interest accrued after the next preceding interest payment date on, the Bonds which have not reached their stated maturity dates and which are due and payable solely by reason of such declaration) have been made or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such event of default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other event of default, or impair any right consequent thereon.

## ARTICLE VII

### SUPPLEMENTAL INDENTURES

Section 7.01. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may without the consent of, or notice to, and of the Bondholders enter into indentures supplemental to this Indenture and financing statements or other instruments evidencing the existence of a lien as shall not, in the opinion of the Trustee, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in the Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Bondholders or the Trustee;
- (c) To subject additional revenues or interests in real or personal property to the lien and pledge of the Indenture;
- (d) To add to the covenants and agreements of the Issuer contained in the Indenture other covenants and agreements thereafter to be observed for the protection of the Bondholders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in the Indenture;
- (e) To evidence any succession to the Issuer and the assumption by such successor of the covenants and agreements of the Issuer contained in the Indenture, the Bond Purchase Agreement, the Agreement and the Bond;
- (f) To modify, amend or supplement the Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939, as amended, or to comply with any similar requirements of any other law; and
- (g) In connection with any other change in the Indenture which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the Bondholder.

Section 7.02 Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures referred to in Section 7.01 hereof and subject to the terms and provisions and limitations contained in this Section, and not otherwise, the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in any other Section or provision of this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental to the Indenture as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the Indenture; provided, however, that nothing in this Section or elsewhere shall permit, or be construed as permitting, a supplemental indenture providing for (a) an extension of the maturity of the principal or of the interest on any Bond, or a reduction in the principal amount of any Bond or the rate of interest or redemption premium thereon, or a reduction in the amount or extension of the time of any payment required by any mandatory sinking fund requirements provided for in the Bond Legislation, without the consent of the holder of each Bond so affected, or (b) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture, without the consent of the holders of all of the then outstanding Bonds.

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section, the Trustee shall, if any coupon Bonds are at the time outstanding, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be published as shall be requested by the Issuer and in any event at least one time (a) in a newspaper of general circulation within the boundaries of the State and (b) in a newspaper or financial journal of general circulation published in the City and State of New York. If because of temporary or permanent suspension of publication or of general circulation, or for any other reason, it is impossible or impractical to publish such notice in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of notice. On or before the date of the first publication of such notice, the Trustee shall also cause a similar notice to be mailed by first-class mail, postage prepaid, to the Original Purchaser of each series of Bonds, to all registered holders of Bonds then outstanding at their addresses as they appear on the



registration books herein provided for, and to all other Bondholders whose names and addresses appear on the list of Bondholders provided for in Section 9(g) of the Bond Legislation authorizing the Bonds. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail, or the failure of such Bondholder to receive, the notice required by this Section, and any such failure shall not affect the validity of such supplemental indenture when consented to and approved as provided in this Section. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the office of the Trustee for inspection by all Bondholders. Such notice or notices may be waived by an instrument or concurrent instruments executed by the holders or owners of all Bonds at the time outstanding.

If within such period, not exceeding three years, as shall be prescribed by the Issuer, following the first publication of such notice, the Trustee shall receive an instrument or instruments purporting to be executed by the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding which instrument or instruments shall refer to the proposed supplemental indenture described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice as on file with the Trustee, thereupon, but not otherwise, the Trustee shall execute such supplemental indenture in substantially such form, without liability or responsibility to any holder of any Bond, whether or not such holder shall have consented thereto.

Any such consent shall be binding upon the holder of the Bond giving such consent and, anything in Section 9.01 hereof to the contrary notwithstanding, upon any subsequent holder of such Bond and of any Bond issued in exchange therefor (whether or not such subsequent holder has notice thereof), unless such consent is revoked by the holder of such Bond giving such consent or by a subsequent holder thereof by filing with the Trustee, prior to the execution by the Trustee of such supplemental indenture, such revocation and, if such Bond or Bonds are transferable by delivery, proof that such Bonds are held by the signer of such revocation in the manner permitted by Section 9.01. At any time after the holders of the required percentage of Bonds shall have filed their consents to the supplemental indenture, the Trustee shall make and file with the Issuer a written statement that the holders of such required percentage of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed.



If the holders of the required percentage in aggregate principal amount of the Bonds outstanding shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to the execution of such supplemental indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Section 7.03. Consent of Company. Anything herein to the contrary notwithstanding, a supplemental indenture under this Article VII which affects any rights or obligations of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any supplemental indenture together with a copy of the proposed supplemental indenture to be mailed as provided in Section 9.04 hereof to the Company at least thirty days before the date of its proposed execution and delivery in the case of a supplemental indenture referred to in Section 7.01 hereof, and not later than fifteen days after the mailing of the notice of the proposed execution and delivery in the case of a supplemental indenture provided for in Section 7.02 hereof.

Section 7.04. Authorization to Trustee; Effect of Supplement. The Trustee is authorized to join with the Issuer in the execution of any supplemental indenture provided for in this Article and to make the further agreements and stipulations which may be contained therein. Any supplemental indenture executed in accordance with the provisions of this Article shall thereafter form a part of the Indenture; all the terms and conditions contained in any such supplemental indenture as to any provision authorized to be contained therein shall be deemed to be part of the terms and conditions of the Indenture for any and all purposes; this Indenture shall be and be deemed to be modified and amended in accordance therewith; and the respective rights, duties and obligations under this Indenture of the Issuer, the Company, the Trustee, and all holders of Bonds then outstanding shall thereafter be determined, exercised and enforced thereunder, subject in all respects to such modifications and amendments. Express reference to such executed supplemental indenture may be made in the text of any Bonds issued thereafter, if deemed necessary or desirable by the Trustee or the Issuer. A copy of any supplemental indenture provided for in this Article, except such as may be entered into pursuant to clause (g) of Section 7.01 hereof, shall be mailed by the Trustee to the Original Purchaser of each and every series of Bonds affected thereby.

Section 7.05 Opinion of Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it, who may be counsel for the Issuer, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of such supplemental indenture.

Section 7.06 Modification by Unanimous Consent. Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the holders of the Bonds and coupons, and the terms and provisions of the Bonds and coupons and this Indenture or any supplemental indenture, may be modified or altered in any respect with the consent of the Issuer and the consent of the holders of all of the Bonds then outstanding and, if required by Section 7.03 hereof, the consent of the Company.

## ARTICLE VIII

### DEFEASANCE

Section 8.01. Release of Indenture. Upon Payment in Full of the Bonds, then and in that event this Indenture (except for Sections 4.01, 4.02, 4.06 and 8.02 hereof) shall cease, determine and become null and void, and the covenants, agreements and other obligations of the Issuer hereunder shall be discharged and satisfied, and thereupon the Trustee shall release this Indenture and the Mortgage, including the cancellation and discharge of the lien hereof, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien hereof and of the Mortgage and to enter on the records such satisfaction and discharge and such other instruments to evidence such release and discharge as may be reasonably required by the Issuer; and the Trustee shall assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under Section 4.06 hereof, or to be held by the Trustee under Section 4.02 hereof or otherwise for the payment of Bond Service Charges.

Section 8.02. Payment and Discharge of Bonds and Coupons. All the outstanding Bonds and coupons of one or more Series or of one or more maturities within any series shall be deemed to have been paid and discharged within the meaning of this Indenture, including, without limitation, Section 8.01 hereof if:

(a) the Trustee shall hold, in trust for and irrevocably committed thereto, sufficient moneys, or

(b) the Trustee shall hold, in trust for and irrevocably committed thereto, general and direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States certified by an independent accounting firm of national reputation to be of such maturities and interest payment dates and to bear such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (likewise to be held in trust and committed, except as hereinafter provided), be sufficient together with moneys referred to in (a) above,

for the payment, at their maturities or redemption dates, of all Bond Service Charges thereon to the date of maturity or the date of redemption, as the case may be, or if default in such payment shall have occurred on such date then to the date of the tender of such payment; provided that for purposes of this calculation only, moneys or obligations representing moneys in the Principal Account and Interest Account of the Bond Fund, and in the Reserve Fund, may be aggregated to determine if there are sufficient amounts for payment of all Bond Service Charges, and moneys from either such Account or the Reserve Fund may then be used to pay any Bond Service Charges, provided further that to the fullest extent possible moneys or obligations representing moneys from the Principal Account of the Bond Fund and the Reserve Fund, or from investment of Reserve Fund moneys, shall be used first to pay principal on the Bonds, and that if any of such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or irrevocable provision satisfactory to the Trustee shall have been duly made for the giving of such notice; and provided further that, in order for the Bonds to no longer be deemed outstanding hereunder, all Trustee's and paying agents' fees and expenses accrued and to accrue hereunder until final payment of the Bonds, whether at the maturities thereof or by prior redemption, shall have been paid or provided for to the satisfaction of the Trustee. Any moneys held by the Trustee in accordance with the provisions of this Section may be invested by the Trustee, but only in general and direct obligations of the United States the maturities or redemption dates of which, at the option of the holder, shall coincide as nearly as practicable with, but not later than, the time or times at which said moneys will be required for the aforesaid purposes. Any income or interest earned by, or increment to, the investments held under this Section shall, to the extent determined from time to time by the Trustee to be in excess of the amount required to be held by it for the purposes of this Section, be transferred at the time of such determination as provided in Section 4.06 hereof for transfers of remaining amounts in the Bond Fund. In the event of non-presentment as referred to in Section 4.02 hereof, the moneys held pursuant to this Section to which Section 4.02 would apply but for the release of this Indenture shall be held and paid as provided for in said Section 4.02.

## ARTICLE IX

### MISCELLANEOUS

Section 9.01 Instruments of Bondholders. Any consent, request, direction, approval, objection or other instrument required by the Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who by law has power to take acknowledgments within such jurisdiction, that the person signing such writing acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of the holding by any person of Bonds transferable by delivery or of coupons and the amounts and numbers of such Bonds or coupons, and the date of the holding of the same, may be proved by a certificate executed by any trust company, bank or banker, wherever situated, stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank or to such banker, as the property of such party, the Bonds and/or coupons therein mentioned, if such certificate shall be deemed by the Trustee to be satisfactory. The Trustee may, in its discretion, require evidence that such Bonds or coupons have been deposited with a bank, banker or trust company before taking any action based on such ownership. In lieu of the foregoing the Trustee may accept other proofs of the foregoing as it shall deem appropriate. For all purposes of this Indenture and of the proceedings for the enforcement hereof, such person shall be deemed to continue to be the holder of such Bond until the Trustee shall have received notice in writing to the contrary. The fact of ownership of Bonds registered as to principal (except to bearer) shall be proved by the registration books maintained by the Bond Registrar.

Nothing contained herein shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matter herein stated which it deems to be sufficient. Any request or consent of the holder of any Bond shall bind every future holder of the same Bond, and any coupons appertaining thereto, in respect to anything done or suffered to be done by the Issuer, the Trustee or any Paying Agent in pursuance of such request or consent.

Section 9.02. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from the Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Company and the holders of the Bonds and coupons, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto, the Company and the Bondholder as herein provided.

Section 9.03. Severability. In case any clause, provision or section of this Indenture, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Indenture, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder thereof or any other clause, provision or section or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken thereunder, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability of any application thereof affect any legal and valid and operable application thereof, from time to time, and each such clause, provision or section, covenant, stipulation, obligation, agreement, act, or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 9.04. Notices. Except as provided in Section 6.01 hereof, it shall be sufficient service or giving of any notice, request, complaint, demand or other paper if the same shall be duly mailed by first class mail addressed as follows: if to the Issuer, at \_\_\_\_\_

\_\_\_\_\_;

except as provided in Section 5.01(g) hereof, if to the Trustee, at Indiana Bank and Trust Company of Fort Wayne, 915 South Calhoun Street, P.O. Box 1204, Fort Wayne, Indiana 46802, Attention: Corporate Trust Department. Duplicate copies of each notice, certificate or other communication given hereunder by the Issuer, Trustee, or the Company to one or all of the others shall also be given to the others. The Issuer, the Company, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, but no such communication shall thereby be required to be sent to more than two addresses.

Section 9.05. Trustee as Paying Agent and Bond Registrar. The Trustee is hereby designated and agrees to act as paying agent and Bond Registrar for and in respect to the Bonds.

Section 9.06. Payments Due on Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds, including any principal amortization date, or the date fixed for redemption of the Bonds, shall be a Sunday or a day on which the Trustee is required, or authorized or not prohibited, by law (including executive orders) to close and is closed, then payment of such interest or principal and any redemption premium need not be made by or on such date but may be made on the next succeeding business day on which the Trustee is open for business with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 9.07. Priority Over Other Liens. This Indenture is given in order to secure funds to pay for new acquisition, construction and installation of real, personal or real and personal property and by reason thereof it is intended that this Indenture shall be superior to any liens which may be placed upon the Construction Fund.

Section 9.08. Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the Issuer contained in the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, stipulation, obligation or agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the Issuing Authority in his individual capacity, and neither the members of the Issuing Authority nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 9.09. Power to Issue Bonds and Make Pledges.

The Issuer is duly authorized pursuant to law to create and issue the Bonds and enter into this Indenture and to pledge the Pledged Receipts and the Bond Fund in the manner and to the extent provided in this Indenture. The Bonds are and will be valid and legally enforceable special obligations of the Issuer and the provisions of this Indenture are and will be the valid and legally enforceable obligations of the Issuer, all in accordance with its terms and the terms of this Indenture, provided that any payments to be made by the Issuer hereunder or under the Bonds shall be payable solely from the Pledged Receipts. The Issuer shall at all times, to the extent permitted by law, cooperate in defending, preserving and protecting the pledge of the Pledged Receipts and the Bond Fund and all the rights of the Bondholder under this Indenture against all claims and demands of all persons whomsoever.

Section 9.10. Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in the Indenture.

Section 9.11. Counterparts. This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.12. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 9.13. Governing Law. This Indenture and the Bond shall be deemed to be contracts made under the laws of the State of Indiana and for all purposes shall be governed by and construed in accordance with the laws of such State.



IN WITNESS WHEREOF, the Issuer and the Trustee have executed this Trust Indenture all as of the date first above written.

CITY OF FORT WAYNE, INDIANA

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
Clerk

(SEAL)

INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE

By: \_\_\_\_\_

Attest: \_\_\_\_\_

(SEAL)

This instrument was prepared by:  
David A. Rogers, Esq.  
Peck, Shaffer & Williams  
2200 First National Bank Center  
425 Walnut Street  
Cincinnati, Ohio 45202

DAR DRAFT: 1011b  
1012b  
9/15/81

MORTGAGE AND SECURITY AGREEMENT

BETWEEN

ALLEN COUNTY AGGREGATES, INC.

AND

INDIANA BANK AND TRUST COMPANY OF FORT WAYNE,  
AS TRUSTEE

\*\*\*\*\*

SECURING:

\$920,000

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS

(ALLEN COUNTY AGGREGATES, INC. PROJECT)

\*\*\*\*\*

DATED AS OF:

October 1, 1981

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but is only for convenience of reference.)

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of October 1, 1981 between Allen County Aggregates, Inc., an Indiana corporation (the "Grantor") and Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, a bank incorporated under the laws of the State of Indiana, as Trustee (the "Grantee"), under the following circumstances:

A. Grantor has entered into a Loan Agreement of even date herewith (the "Loan Agreement") with the City of Fort Wayne, Indiana, an Indiana municipal corporation and political subdivision (the "Issuer"), pursuant to the terms of which the Issuer has agreed to loan to Grantor the principal amount of \$920,000, and Grantor has agreed to deliver the Note (as hereinafter defined) to evidence said loan and to grant this mortgage on and security interest in the Project and Project Site (both hereinafter defined) as security for the payment of the Note.

B. To finance costs of the Project by providing the funds for the aforesaid loan, the Issuer has issued on the date of delivery of this Mortgage its Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project) in the principal amount of \$920,000 (the "Bonds"); such Bonds being issued under a Trust Indenture of even date herewith (the "Indenture") between the Issuer and the Grantee.

C. The amounts payable by Grantor pursuant to the Note are equal to the amounts payable by Issuer as principal, premium (if any) and interest on the Bonds.

D. The Issuer, Grantee and Grantor have entered into a Bond Purchase Agreement of even date herewith (the "Bond Purchase Agreement") with Indiana Bank and Trust Company of Fort Wayne, The Cincinnati Insurance Company, an Ohio Corporation and \_\_\_\_\_, an individual (collectively the "Original Purchaser"), pursuant to which, subject to the terms and conditions contained therein, the Original Purchaser has agreed to purchase the Bonds.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the foregoing recitals, which shall be construed as parts hereof for all purposes, and as security for the payment of the principal of and interest on, and all other sums provided for in the Note and the Bonds, and any extensions or renewals thereof, and for performance of the agreements,

conditions, covenants, provisions and stipulations contained herein and in the Note, the Bonds, the Indenture, the Bond Purchase Agreement and the Loan Agreement and in any other agreements and instruments made and given by Grantor to Grantee in connection therewith, Grantor does hereby grant, bargain, sell, convey, mortgage and warrant, assign, transfer and grant a security interest in and pledge unto Grantee, as Trustee, and unto its successors and assigns forever, all of Grantor's estate, right, title and interest in, to and under any and all of the following described property, rights and interests (herein called the "Mortgaged Property"):

#### GRANTING CLAUSE FIRST

All right, title and interest of Grantor in and to the Project and the Project Site (both as hereinafter defined) together with the entire interest of Grantor in and to all buildings, structures, improvements and appurtenances of any nature whatsoever now standing, or at any time hereafter constructed or placed, upon the Project Site, including all right, title and interest of Grantor, if any, in and to all building material (whether on or off the Project Site), building equipment and fixtures of every kind and nature whatsoever at the Project or in any building, structure or improvement now or hereafter standing on the Project Site, and the proceeds of any insurance on such property, and together with the entire interest of Grantor in and to all and singular the tenements, hereditaments, easements, rights-of-way, rights, privileges and appurtenances to said real estate, belonging or in any wise appertaining thereto (including without limitation the entire right, title and interest of Grantor in, to and under any streets, ways, alleys, gores or strips of land adjoining the Project Site, and all claims or demands whatsoever of Grantor either at law or in equity, in possession or expectancy of, or in and to the Project Site), it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by Grantor and is affixed or attached or annexed to the Project Site, shall be and remain or become and constitute a portion of the Project Site and the security covered by and subject to the lien of this Mortgage, together with all rents, income, revenues, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, issues and profits arising therefrom or in connection therewith; subject, however, to Permitted Encumbrances (as hereinafter defined).

#### GRANTING CLAUSE SECOND

All furniture, furnishings, goods, appliances, apparatus, machinery and equipment of any nature whatsoever and all other tangible personal property, the purchase price of which is paid directly or reimbursed to the Company from the Construction Fund pursuant to the Loan Agreement, and all accessions thereto, replacements thereof and proceeds therefrom, including any buildings and improvements hereafter erected thereon, or used or intended to be used in connection with the Project, or in the operation of any buildings and improvements now or hereafter erected which comprise a part of the Project, or in the operation or maintenance of any such building or improvement, whether or not the personal property is or shall be affixed thereto, and expressly including, but without limiting the generality of the foregoing, all articles of personal property (if any) listed on Exhibit A attached hereto and incorporated herein by reference, and any property acquired in substitution or renewal or repair thereof pursuant to this Mortgage, less any removed by Grantor in accordance with this Mortgage, and the proceeds of any insurance on the foregoing property; subject, however, to Permitted Encumbrances, as hereinafter defined.

#### GRANTING CLAUSE THIRD

All rentals due or to become due under any lease or leases or rights or licenses to use or occupation of any part of the Mortgaged Property now or hereafter created, as well as all rights or licenses and remedies provided in such leases, rights or licenses.

#### GRANTING CLAUSE FOURTH

Any and all other rights and interests in property, whether tangible or intangible, required to be subject to the lien hereof, or from time to time by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder by Grantor or by anyone in its behalf or with its written consent to Grantee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all and singular the Mortgaged Property hereby conveyed, granted and assigned, as agreed or intended so to be, unto Grantee, its successors and assigns forever.

PROVIDED, HOWEVER, and this instrument is upon the express condition that, if Grantor pays, or causes to be paid, to Grantee the entire principal sum of the Note and the Bonds, the interest thereon and all other sums payable by Grantor to Grantee as are secured hereby in accordance with the provisions of the Note, the Loan Agreement, the Indenture, the Bond Purchase Agreement and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Grantor performs and complies with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Note, the Bonds, the Indenture, the Bond Purchase Agreement and the Loan Agreement, then this Mortgage and the estate and security interest hereby granted shall terminate, cease, determine and be void; otherwise this Mortgage and the estate and security interest hereby granted shall be and remain in full force and effect.

Grantor does hereby further agree and covenant as follows:



ARTICLE I  
DEFINITIONS

Section 1.1 General. In addition to the words and terms defined in the recitals and elsewhere in this Mortgage, certain words and terms as used in this Mortgage shall have the meaning given to them by the definitions and descriptions in this Article I unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined. Those words and terms not specifically defined herein and used in this Mortgage with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings set forth in the Loan Agreement and the Indenture.

Section 1.2 Definitions. The following words and terms are defined terms under this Mortgage:

"Bond Legislation" means the Resolution adopted by the Issuing Authority authorizing the issuance of the Bonds.

"Net Proceeds" means, as to any insurance proceeds or any condemnation award, the amount remaining after deducting therefrom all expenses (including attorneys' fees and expenses of Grantee) incurred in the collection of such proceeds or award, plus any interest earned on the investment thereof.

"Note" means the Promissory Note of Grantor dated as of the date of delivery of this Mortgage, payable to the Issuer and assigned to Grantee, in the principal amount of \$920,000.

"Notice Address" means the respective notice addresses provided for in Section 8.2 of the Loan Agreement.

"Permitted Encumbrances" means as of any particular time,

(i) the right reserved to or vested in any municipality or public authority by the terms of any provision of law to terminate any right, power, franchise, grant, license or permit, provided that the exercise of such right would not materially impair the use of the Project for the purposes for which it is held by Grantor or materially adversely affect its value;

(ii) the right reserved to or vested in any municipality or public authority to purchase, condemn or appropriate all or any part of the Project or Project Site;

(iii) liens for the taxes, assessments, levies, fees, charges, duties, imposts, claims and demands referred to in this Mortgage which are not at the time due and payable, or the validity or amount of which is being contested in compliance with the provisions of this Mortgage, provided that any mechanic's or materialmen's lien shall be subordinate to the lien of this Mortgage;

(iv) easements, rights of way, licenses, restrictions and other defects, encumbrances and irregularities in the title to the Project or Project Site which do not materially impair the use thereof for the purposes for which it is held by Grantor or materially adversely affect its value;

(v) rights reserved to or vested in any municipality or public authority to control or regulate the Project or Project Site or to use the Project or Project Site in any manner which does not materially impair the use thereof for the purposes for which it is held by Grantor or materially adversely affect its value;

(vi) the lien and security interest of this Mortgage;

(vii) the lien and security interest to which Grantee may consent pursuant to Section 4.4 hereof;

(viii) any encroachment, encumbrance, easement, exception or violation set forth in Exhibit B hereto; provided that, with respect to those items listed in subparagraphs (i), (iv) and (v) of this definition which are to not materially impair the use of the Project or Project Site for the purposes for which it is held by Grantor or materially adversely affect its value, the Grantee receives a written certificate to that effect from both the Grantor and either a professional engineer registered in the State of Indiana or an architect licensed in the State of Indiana.

"Project" means the Project Site and the real, personal, or real and personal property, including undivided interests or other interests therein, identified in Exhibit A attached hereto as a part hereof, or acquired, constructed or installed as a replacement or substitution therefor or an

addition thereto, or as may result from a revision of the plans and specifications therefor in accordance with the provisions of the Loan Agreement or this Mortgage.

"Project Site" means the real estate and interests in real estate constituting the site and part of the Project, as described in Exhibit B attached hereto as a part hereof.

## ARTICLE II

### PAYMENTS, TAXES, INSURANCE, MAINTENANCE, SUBSTITUTIONS, REMOVAL, LIENS, DAMAGE AND DESTRUCTION, CONDEMNATION, EXPENSES OF GRANTEE

---

Section 2.1 Loan Agreement and Note. Grantor shall make all payments when due under the Note and the Loan Agreement, and shall perform and comply with all covenants, agreements, conditions, provisions, stipulations and obligations set forth therein on its part to be performed, at the times and in the manner required thereby.

Section 2.2 Taxes and Other Charges. Grantor shall pay or cause to be paid when due and payable and before interest or penalties are due thereon, without any deduction, defalcation or abatement, all taxes, assessments, water and sewer rents charges and claims which may be assessed, levied, or filed at any time against Grantor, the Mortgaged Property or any part thereof or against the interest of Grantee therein (including without limitation any taxes, assessments or other charges with respect to land over which easements for the benefit of the Project Site have been granted), or which by any present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial sale; and Grantor shall produce to Grantee not later than such dates receipts for the payment thereof; provided, however, that if, pursuant to this Mortgage or otherwise, Grantor shall have deposited with Grantee before the due date thereof sums sufficient to pay any such taxes, assessments, water and sewer rents, charges and claims, and Grantor is not otherwise in default, they shall be paid by Grantee; and provided further, that if Grantor in good faith and by appropriate legal action shall contest the validity of any such item, or the amount thereof, and shall have established on its books or by deposit of cash with Grantee, as Grantee may elect, a reserve for the payment thereof in such amount as Grantee may require, then Grantor shall not be required to pay the item or to produce the required receipts while the reserve is maintained and so long as the contest operates to prevent collection, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Grantor. Further, Grantor will not apply for or claim any deduction, by reason of this Mortgage, from the taxable value of all or any part of the Mortgaged Property. It is expressly agreed that no credit shall be claimed or allowed on the interest payable on the Note because of any taxes or other charges paid.

Section 2.3 Insurance. Except as may be otherwise provided in the Bond Purchase Agreement, Grantor shall obtain insurance with respect to the Project issued by an insurer or insurers and on policy forms satisfactory to Grantee in an amount equal to at least 80% of the replacement value of the Project, but in no event less than the Original Principal Sum, against loss or damage from theft, fire, vandalism and other events covered by uniform standard extended coverage endorsements approved by the insurance regulatory authority in the State of Indiana. Any such policy or policies may provide that it or they will not cover the first \$10,000 of aggregate loss with the result that Grantor is its own insurer to that extent. Grantor may alternatively insure such property under a blanket insurance policy or policies which cover not only such property but other properties. During the Construction Period, in lieu of the property insurance described above, Grantor shall carry a policy or policies of builders risk-completed value fire and extended coverage insurance, without co-insurance, in the amount of the full insurable value of the Project improvements.

Any insurance policy issued pursuant to the preceding paragraphs shall be so written or endorsed as to make losses, if any, payable to Grantee, in addition to Grantor, as their respective interests may appear. Each insurance policy provided for in the preceding and following paragraphs shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to Grantee and the Issuer at least thirty (30) days in advance of such cancellation, and Grantor shall deliver to Grantee the original policies of insurance, except in the case of blanket policies, in which case Grantor shall deliver to Grantee evidence of such blanket insurance and agrees to keep such evidence up to date and accurate.

Grantor shall also carry public liability insurance with reference to the Project and Project Site with one or more reputable insurance companies approved by Grantee and duly qualified to do business in Indiana, in minimum amounts of \$300,000 for the death of or bodily injury to one person, \$1,000,000 for personal injury or death for each occurrence and \$100,000 for property damage for any occurrence. Grantee and the Issuer shall be made additional insureds under such policies. Such public liability insurance may be by blanket insurance policy or policies.

Each insurer is hereby authorized and directed to make payment under the insurance described in this Section (except liability insurance), including return of unearned premiums,

directly to Grantee instead of to Grantor and Grantee jointly, and Grantor hereby appoints Grantee, irrevocably, as Grantor's attorney-in-fact to endorse any draft therefor.

Throughout the term of the Loan Agreement, Grantor shall comply, or cause compliance, with applicable workers' compensation laws.

Section 2.4 Tax Deposits. Without limiting the effect of Section 2.2 hereof, Grantor shall pay to Grantee monthly on or before the first day of each month, commencing with the month in which the first installment of principal and interest on the Note is due and payable, an amount equal to one-twelfth (1/12) of the annual real estate taxes, any special assessments, water and sewer rents, charges or claims and any other items which at any time may be or become a lien upon the Mortgaged Property prior to the lien of this Mortgage; and on demand from time to time Grantor shall pay to Grantee any additional sums necessary to pay, at least ten (10) days prior to the due date thereof, such taxes and other items, all as estimated by Grantee; the amounts so paid shall be security for such taxes and other items and shall be used in payment thereof if Grantor is not otherwise in default hereunder. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Grantee, and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage, the whole amount of the unpaid principal debt becomes due and payable, Grantee shall have the right, at its election, to apply any amount so held against the entire indebtedness secured hereby. At Grantee's option, Grantee from time to time may waive, and after any such waiver may reinstate, the provisions of this paragraph requiring the monthly payments prescribed herein.

Section 2.5 Maintenance of Mortgaged Property. Grantor shall keep and maintain or cause to be kept and maintained the Mortgaged Property and the sidewalks and curbs abutting same, in good order and condition (including operating condition) and in rentable and tenantable state of repair, and will make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. Grantor shall abstain from and shall not permit the commission of waste in, of or about the Mortgaged Property; shall not remove or demolish any building erected at any time on the Mortgaged Property without the prior written consent of Grantee; and shall not permit the Mortgaged Property to become vacant, deserted or unguarded.

Grantee and the Issuer shall have the right to enter upon the Mortgaged Property at any reasonable hour for the purpose of inspecting the order, condition and repair of the Mortgaged Property.

So long as such shall not be in violation of the Act, and provided there is continued compliance with applicable laws and the regulations of governmental jurisdictions, Grantor shall have the right to remodel the Project or make additions, modifications and improvements thereto, from time to time as it, in its discretion, may deem to be desirable for its uses and purposes, the cost of which remodeling, additions, modifications and improvements shall be paid by Grantor, and the same shall, when made, become a part of the Mortgaged Property except for additional machinery, equipment, furniture, furnishings and other personal property, which shall (unless installed in replacement of Project components or as an accession thereto) remain the property of Grantor in which the Grantee shall have no interest and may be removed from the Project Site at any time provided that Grantor shall repair any damage to the Project resulting from such removal. No such remodeling, addition, modification or improvement of the Project shall materially adversely affect the value of the Mortgaged Property.

#### Section 2.6 Substitutions for Portions of the Project.

Grantor shall have the right from time to time to substitute personal property or fixtures for any portions of the Project, provided that the personal property or fixtures so substituted shall not impair the character of the Project as a "project" within the meaning of the Act and shall not impair the value of the Mortgaged Property. Any such substituted property or fixtures shall become part of the Project. Personal property, fixtures and equipment installed and owned by any tenant of the Mortgaged Premises shall not become a part of the Project.

#### Section 2.7 Damage and Destruction.

If the Project is damaged or destroyed by fire or other casualty, unless Grantor elects within 30 days to prepay the Note in full in accordance with the provisions of the Loan Agreement, (i) Grantor will promptly repair, replace, rebuild or restore the property damaged or destroyed to such extent as Grantor deems appropriate for its uses and purposes, provided that, at a minimum, the Mortgaged Property as so repaired, replaced, rebuilt or restored shall have a value, as reasonably determined by the Holder, sufficient to fully secure the then outstanding principal amount of the Bonds, and (ii) Grantor and Grantee will apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for losses, under the insurance policies required to be carried herein, resulting from such damage.

All Net Proceeds of insurance resulting from such claims for losses in excess of \$10,000 shall be paid to and held by Grantee in a separate disbursement account, and Grantee will apply so much as may be necessary of the Net Proceeds of such insurance to payment of the costs incurred by Grantor for the repair, replacement, rebuilding or restoration of the Project, either on completion thereof or as the work progresses as directed by Grantor. In the event any Net Proceeds of insurance will be insufficient to pay in full the costs of repair, replacement, rebuilding or restoration under this Section, Grantor will nonetheless perform such repair, replacement, rebuilding or restoration and will, prior to the commencement thereof, deposit the deficiency with Grantee in such separate disbursement account, which deposit shall first be exhausted before any disbursement of the Net Proceeds of insurance. Grantor shall not, by reason of the payment of any excess costs of repair, replacement, rebuilding or restoration, be entitled to any reimbursement from Grantee or the Issuer or any abatement or diminution of payments under the Loan Agreement or the Note.

Any moneys held by Grantee in the separate disbursement account under the provisions of the preceding paragraph shall, at the written request of the Authorized Company Representative, be invested by Grantee in Eligible Investments; provided however that Grantor shall be solely responsible for any losses resulting from any such investments.

Any balance of such Net Proceeds remaining after payment of all the costs of repair, replacement, rebuilding or restoration under this Section shall be paid to Grantor.

If upon any damage to or destruction of the Project Grantor elects pursuant to the provisions of the Loan Agreement to prepay the Note in full rather than repair, replace, rebuild or restore the property damaged or destroyed, all Net Proceeds of insurance shall be applied to such prepayment of the Note, and any balance remaining after such prepayment shall be paid to Grantor.

Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an event of default under this Mortgage, Grantee may apply any Net Proceeds of insurance received by it pursuant to the provisions of this Mortgage to partial or full prepayment of the Note, or to costs of repair, replacement, rebuilding or restoration of the Project, or to any combination of the foregoing, as Grantee with the consent of the Holder may elect.



Section 2.8 Condemnation. If title to, or the temporary use of, the Project or Project Site or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Grantor shall be obligated to continue to make the payments required by the Loan Agreement and the Note. Grantor, Grantee and the Issuer will cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings, to be paid to and held by Grantee in a separate disbursement account to be applied in one or more of the following ways as shall be directed in writing by Grantor:

(a) The modification or restoration of the improvements located on the Project Site, or the acquisition, by construction, installation or otherwise, by Grantor of buildings, machinery, equipment, fixtures or other improvements on the Project Site, all to the extent deemed appropriate by Grantor for its uses and purposes; provided that, at a minimum, the Mortgaged Property as so modified, restored or acquired shall have a value, as reasonably determined by the Holder, sufficient to fully secure the then outstanding principal amount of the Bonds; and provided further that the Mortgaged Property as so modified, restored or acquired shall be subject to no liens or encumbrances except Permitted Encumbrances.

(b) Prepayment of the Note in whole or, to the extent permitted under the provisions of the Loan Agreement, in part, together with accrued interest thereon to the date of prepayment and any applicable prepayment premium; provided that any partial prepayment of the Note shall be subject to the condition that the value of the Mortgaged Property, including any modifications, restorations or acquisition pursuant to paragraph (a) above, shall have a value, as reasonably determined by the Holder, sufficient to fully secure the outstanding principal amount of the Bonds after such partial prepayment.

If Grantor elects to apply any Net Proceeds of any such award in the manner set forth in paragraph (a) above, and the amount of such Net Proceeds will be insufficient to pay in full the costs of such modification, restoration or acquisition, then prior to the commencement of any such modification, restoration or acquisition Grantor will deposit the deficiency with Grantee in the separate disbursement account provided for in this Section. Such deposit shall first be applied to the costs of such modification, restoration or acquisition before any Net Proceeds of any such award are so applied.

Within 30 days from the date of entry of a final order in any eminent domain proceedings granting condemnation, Grantor shall direct Grantee and the Issuer in writing as to which of the ways specified in this Section Grantor elects to have the condemnation award applied. Any balance of the Net Proceeds of the award in such eminent domain proceedings shall be paid and applied in the same manner as specified in Section 2.8 hereof for excess Net Proceeds of insurance.

Any moneys held by Grantee under the provisions of the preceding paragraph shall, at the written request of the Authorized Company Representative, be invested or reinvested by Grantee in Eligible Investments; provided however that Grantor shall be solely responsible for any losses resulting from any such investments.

Notwithstanding anything herein to the contrary, upon the occurrence and continuance of an event of default under this Mortgage, Grantee may apply any Net Proceeds of condemnation award received by it pursuant to the provisions of this Mortgage to partial or full prepayment of the Note, or to costs of modification, restoration or acquisition of the Mortgaged Property, or to any combination of the foregoing, as Grantee with the consent of the Holder may elect.

Section 2.9 Expenses of Grantee. Such reasonable expenses and fees as may be incurred by Grantee in the protection of the Mortgaged Property and in the maintenance of the lien of this Mortgage, or incidental to any repairs, replacement, rebuilding, restoration or modification of the Mortgaged Property, shall be paid by Grantor on demand and secured by this Mortgage.

### ARTICLE III

#### EVENTS OF DEFAULT AND REMEDIES

Section 3.1 Events of Default. The following shall be "events of default" under this Mortgage:

(a) The occurrence of an Event of Default as defined in Section 7.1 of the Loan Agreement.

(b) Failure by Grantor to observe and perform any other covenant, warranty, condition or agreement on its part to be observed or performed hereunder, for a period of 30 days (unless the Grantee shall agree in writing to an extension of such time prior to its expiration) after notice of such failure requesting such failure to be remedied, given to Grantor by Grantee or the Issuer.

The provisions of paragraph (b) of this Section are subject to the following limitations: If by reason of acts of God; winds, fires; epidemics; landslides; floods; droughts; famines; strikes; lockouts or other industrial disturbances; act of public enemies; acts or orders of any kind of any governmental authority; insurrection; military action; war, whether or not declared; sabotage; riots; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any cause or event not reasonably within the control of Grantor, Grantor is unable in whole or in part to carry out the agreements on its part herein contained, other than obligations on the part of the Grantor to make the payments required under the Note and the Loan Agreement, to carry insurance, to pay any ad valorem property taxes, and to make other payments or deposits pursuant to the terms hereof, Grantor shall not be deemed in default during the continuance of such inability. Grantor shall, however, use its best efforts to remedy with all reasonable dispatch the cause or causes preventing Grantor from carrying out its agreements; provided, that Grantor shall in no event be required to settle strikes, lockouts or other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of Grantor, not in the interest of Grantor.

Section 3.2 Other Remedies. In addition to any other remedy available to Grantee, as provided herein or otherwise, Grantee may exercise any remedy available to it under the Loan Agreement, Indenture, Bond Purchase Agreement, or under any applicable law, including the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Indiana.

Section 3.3 Acceleration. Upon the occurrence of an event of default, Grantee may by notice in writing delivered to Grantor declare the principal, interest and all other sums secured by this Mortgage to be due and payable immediately and, upon said declaration, such principal, interest and other sums shall become and be immediately due and payable.

Section 3.4 Surrender of Possession; Rights and Duties of Grantee in Possession. Upon the occurrence of an event of default Grantor, upon demand of Grantee, shall forthwith, to the extent possible, assemble the Mortgaged Property and proceeds and make them available to the Grantee at the Project Site or some other place to be designated by the Grantee which is convenient to both parties, and Grantor shall forthwith surrender the possession of, and it shall be lawful for the Grantee to take possession of, all or any part of the Mortgaged Property together with the books, papers and accounts of Grantor pertaining thereto, and to hold, operate and manage the same, and from time to time to make all needful repairs, replacements and improvements; and Grantee may lease or license the use of the Mortgaged Property or any part thereof in the name and for the account of Grantor and collect, receive and sequester the rents, license fees, revenues and other income, charges and moneys therefrom, and out of the same and any moneys received from any receiver of any part thereof, after deducting all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to Grantee, its agents and counsel, pay and/or set up proper reserves for the payment of any or all of the following in such order and amounts as Grantee, in Grantee's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, costs of maintenance, repair, replacement or restoration of the Mortgaged Property, and on account and in reduction of the principal or interest, or both, on the indebtedness hereby secured. For the aforesaid purpose, Grantor hereby assigns to Grantee all rentals and license fees due and to become due under any leases or rights or licenses to use and occupation of the Mortgaged Property now or hereafter created, as well as all rights and remedies provided in such leases, rights or licenses. In the event that all events of default have been made good and Grantee shall have surrendered possession to Grantor, the right of entry provided in this Section shall again exist upon any subsequent event of default.

Section 3.5 Actions to Recover Amounts Due. Grantee and the Issuer shall each have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Grantor under the terms of this Mortgage, the Bond

Purchase Agreement the Note or the Loan Agreement, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Note, the Bond Purchase Agreement the Loan Agreement and this Mortgage shall be due, and without prejudice to the right of Grantee thereafter to institute foreclosure or otherwise dispose of the Mortgaged Property or any part thereof, or any other action, for any default by Grantor existing at the time the earlier action was commenced.

Section 3.6 Foreclosure. Upon the occurrence of an event of default, the lien on the Mortgaged Property created and vested by this Mortgage may be foreclosed and Grantee may sell or otherwise dispose of the Mortgaged Property in the manner provided by law, and Grantee, if the highest bidder, may become the purchaser of the Mortgaged Property at any such sale. Grantee will give Grantor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the Notice Address of Grantor at least five (5) days before the time of such sale or disposition.

Section 3.7 Appointment of Receiver. Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of Grantee under this Mortgage, Grantee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Mortgaged Property and all receipts therefrom, pending such proceedings, with such power as the court making such appointment shall confer; provided, however, that Grantee may, with or without action under this Section, pursue any available remedy to enforce the payment of principal and interest and premium, if any, or to remedy any event of default.

Section 3.8 Application of Moneys. All moneys received by Grantee or a receiver pursuant to any right given or action taken under the provisions of this Article shall be paid into the Construction Fund or the Bond Fund, as the case may be, and, after the payment of any applicable late charge on the Note and the costs, expenses, liabilities and advances incurred by Grantee or receiver, together with interest thereon at the Interest Rate for Advances, be applied in the manner provided in Section 3.4 hereof if such moneys are received other than as a result of foreclosure or any other disposition of the Mortgaged Property, and if received as a result of foreclosure or any other disposition of the Mortgaged Property shall be applied first to the payment of any applicable late

charge on the Note and the costs, expenses, liabilities and advances incurred by Grantee or receiver, together with interest thereon at the Interest Rate for Advances, then to the payment of accrued interest on the Note, then to the payment of the principal of and any applicable premium on the Note, and the balance, if any, shall be paid to Grantor.

Section 3.9 Rights and Remedies Cumulative; No Waiver or Release of Obligation. The rights and remedies of Grantee as provided in this Mortgage, the Note, the Indenture, the Bond Purchase Agreement or the Loan Agreement, and in the warranties contained herein and therein shall be cumulative and concurrent, may be pursued separately, successively or together against Grantor or against the Mortgaged Property, or both, at the sole discretion of Grantee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

Any failure by Grantee to insist upon strict performance by Grantor of any of the terms and provisions of this Mortgage, the Note, the Bond Purchase Agreement or the Loan Agreement shall not be deemed to be a waiver of any of the terms or provisions thereof, and Grantee shall have the right thereafter to insist upon strict performance by Grantor of any and all of them.

No delay or omission to exercise any right or power accruing upon any failure or event of default shall impair any right or power or shall be construed to be a waiver of any such failure or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any failure or event of default hereunder by Grantee shall extend to or shall affect any subsequent failure or event of default or shall impair any rights or remedies consequent thereon.

Neither Grantor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Grantee to comply with any request of Grantor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage, the Note, the Indenture, the Bond Purchase Agreement or the Loan Agreement, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between

any subsequent owner of the Mortgaged Property and Grantee extending the time of payment or modifying the terms of the Mortgage, without first having obtained the consent of Grantor or such other person; and in the latter event Grantor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Grantee.

Grantee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

Section 3.10 Termination of Proceedings. If Grantee shall have proceeded to enforce any right under this Mortgage by the appointment of a receiver, by entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case Grantor and Grantee shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of Grantee shall continue unimpaired as before.

Section 3.11 Right to Remedy Default. In the event that Grantor should fail to carry the insurance required herein or pursuant hereto, or to pay or cause to be paid real estate or other taxes, assessments, water and sewer rents, charges and claims (unless and only for so long as, in strict compliance with the provisions of Section 2.2 hereof, Grantor is contesting the validity of any such item or the amount thereof), corporate taxes, sums due under any prior lien or approved prior lien, or insurance premiums, or fail to make necessary repairs, or permit waste, or fail to cure any default under any prior lien or approved prior lien, or fail to comply with any other obligation on its part contained herein or in the Loan Agreement or the Bond Purchase Agreement, Grantee, at its election and without notice to Grantor, shall have the right to make any payment or expenditure and to take any action which Grantor should have made or taken, or which Grantee deems advisable to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Grantee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Grantee or due the Issuer pursuant to this Mortgage, the Loan Agreement, the Indenture or the Bond Purchase Agreement shall be due immediately from Grantor to Grantee or to the Issuer, as the case may be, and, together with interest thereon at the Interest Rate for Advances, shall be secured hereby.

Section 3.12 Relationship to Indenture. This Mortgage is made subject to all of the terms, covenants and conditions of the Indenture. It is understood that the Holder shall have hereunder such rights with respect to direction of and taking Grantee's actions hereunder as are provided in the Indenture.



## ARTICLE IV

### COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 4.1 Warranty of Title; Authority. Grantor hereby covenants, represents and warrants that, subject to Permitted Encumbrances, (a) it has a good and marketable title to an indefeasible fee simple estate in the Project Site subject to no lien, charge or encumbrance; (b) it will own the Project free and clear of liens and claims, and no financing statement covering the Mortgaged Property or any part thereof is on file in any public office; (c) this Mortgage is and will remain a valid and enforceable first lien on the Mortgaged Property (provided that, except to the extent otherwise elected by Grantee, this Mortgage shall at all times remain superior to the leases contemplated in the Bond Purchase Agreement); (d) it has full power and lawful authority to mortgage the Mortgaged Property and grant a security interest therein in the manner and form herein done or intended hereafter to be done; and (e) it will preserve such title, and all of its rights in and to the Mortgaged Property, and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

Section 4.2 Notices to Grantee. Grantor shall notify Grantee promptly of the occurrence of any of the following:

- (a) a fire or other casualty causing damage to the Mortgaged Property;
- (b) receipt of notice of condemnation of the Mortgaged Property or any part thereof;
- (c) receipt of notice from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property;
- (d) receipt of any notice of alleged default from any tenant of all or any portion of the Mortgaged Property;
- (e) any change in the occupancy of the Mortgaged Property;
- (f) receipt of any notice of alleged default from the holder of any lien or security interest in the Mortgaged Property; or
- (g) commencement of any litigation affecting the Mortgaged Property.

Section 4.3 Leases and Restrictions. Grantor hereby represents that there are no leases, subleases, or agreements to lease or sublease all or any part of the Mortgaged Property now in effect. Grantor hereby agrees not to lease or allow or suffer to be leased or subleased any space in the Mortgaged Property from and after the date hereof without the prior written consent of 66 2/3% of the holders of the then outstanding principal amount of the Bonds, whose prior written approval of all tenants, subtenants and leases and subleases shall be required, which consent and approval shall not be unreasonably withheld. Grantor shall not accept a surrender of any such approved lease or sublease, or release or discharge any tenant of and from the payment of rent thereunder, or accept prepayment of any such rent for any period in excess of one month, or consent to any modification or termination of any such lease or sublease, without the prior written consent of the Holder, which consent shall not be unreasonably withheld. At the option of 66 2/3% of the holders of the then outstanding principal amount of the Bonds, any or all of such leases and subleases shall be prior to or subordinate to the lien of this Mortgage. Grantor covenants and agrees that it will comply with the terms of, and will promptly perform all of its obligations under, all existing and future leases and subleases of all or any part of the Mortgaged Property and under deed or use restrictions affecting the Mortgaged Property; and in default thereof (a) Grantee may, at its option, perform the same and the cost thereof, together with interest at the Interest Rate for Advances, shall immediately be due from Grantor to Grantee and be secured by this Mortgage, and (b) subject to the provisions of Section 3.1(b) hereof, Grantee may, at its option, treat any such default as an event of default hereunder.

Section 4.4 No Further Encumbrance; No Disposition. Without the prior written consent of Grantee, and except as may be permitted herein, Grantor shall not grant a security interest in, mortgage, encumber, hypothecate, sell, transfer, assign or otherwise dispose of all or any part of the Mortgaged Property, or any legal or equitable interest therein, or the revenues and receipts thereof (other than to Grantee hereunder) or assign, transfer or hypothecate (other than to Grantee hereunder) any rentals or license fees (or analogous payment) then due or to accrue in the future under any lease of or license to use the Project or Project Site or any part thereof, or permit assumption by any third party of Grantor's obligations under the Loan Agreement or the Note except as permitted under the Loan Agreement. Notwithstanding the provisions of Section 3.1 hereof, any breach of any of the provisions of this Section shall automatically constitute an event of default under this Mortgage, without notice or lapse of time.

Section 4.5 Compliance with Laws and Regulations. Grantor covenants and agrees that in the maintenance, repair, renewal, replacement, remodeling, modification, operation and management of the Mortgaged Property it will observe and comply with all insurance underwriters' requirements and with all applicable, lawful and constitutional Federal, state and local statutes, ordinances, regulations, orders and restrictions, reserving hereby its right to contest the same, or the application of the same, so long as such contest shall not prejudice the lien of this Mortgage nor affect the amounts secured hereby.

Section 4.6 Covenant Running with the Land. Any act or agreement to be done or performed by Grantor shall be construed as a covenant running with the land and shall be binding upon Grantor and its successors and assigns as if they had personally made such agreement.

Section 4.7 Further Assurances. Grantor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such mortgages or security agreements supplemental hereto and such further acts, instruments and transfers, including, without limiting the generality of the foregoing, such filing, registration, recording, refileing, reregistration or rerecording, as may be necessary or as Grantee may reasonably require for better assuring, transferring, mortgaging, pledging, assigning, confirming and securing unto Grantee all and singular the Mortgaged Property.

## ARTICLE V

### MISCELLANEOUS

Section 5.1 Notices. All notices, certificates, requests or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, addressed to the appropriate Notice Addresses.

Section 5.2 Amendments, Changes and Modifications. Except as may otherwise be provided in the Loan Agreement, this Mortgage may not be effectively amended, changed, modified or altered without the prior written consent of the party against whom enforcement of such amendment, change, modification or alteration is sought.

Section 5.3 Execution Counterparts. This Mortgage may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 5.4 Severability. In case any clause, provision or section of this Mortgage, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Mortgage, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder thereof or any other clause, provision or section or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken thereunder, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability of any application thereof affect any legal and valid and operable application thereof, from time to time, and each such clause, provision or section, covenant, stipulation, obligation, agreement, act, or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 5.5 General Waivers By Grantor. Grantor hereby waives and releases, to the extent permitted by law:

(a) all errors, defects and imperfections in any proceeding instituted by Grantee hereunder or under the Note, the Loan Agreement, the Indenture, the Bonds or the Bond Purchase Agreement;

(b) all benefit that might accrue to Grantor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment;

(c) any appraisalment, valuation, stay, extension or redemption or usury law now or hereafter in force; and

(d) unless specifically required herein, all notices of Grantor's default or of Grantee's election to exercise, or Grantee's actual exercise, of any option or remedy hereunder or under the Note, the Loan Agreement, the Indenture, the Bonds or the Bond Purchase Agreement.

Section 5.6 Effect of Mortgage. This Mortgage constitutes a security agreement under the Uniform Commercial Code as adopted in the State of Indiana and creates a security interest in favor of Grantee in and to all that property (and the proceeds, accessions and replacements thereof, and the proceeds of any insurance on such property) included in the Mortgaged Property which constitutes fixtures or personal property. Grantor shall execute, deliver, file and refile any financing statements, continuation statements, or other security agreements Grantee may require from time to time to confirm the lien of this Mortgage with respect to such property. If certificates of title are issued with respect to any such property, Grantor will cause the interest of the Grantee to be properly noted thereon. Without limiting the foregoing, Grantor hereby irrevocably appoints Grantee attorney-in-fact for Grantor to execute, deliver and file such instruments for and on behalf of Grantor. Notwithstanding any release of any or all of that property included in the Mortgaged Property which is deemed "real property", any proceedings to foreclose this Mortgage, or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the obligations of Grantor as are now or hereafter evidenced by the Note or otherwise secured hereby. Nothing herein shall preclude Grantee from proceeding as to both real and personal property in accordance with Grantee's rights and remedies in respect of real property, as provided in Article 9 of the Uniform Commercial Code as adopted in Indiana.

Section 5.7 Captions. The captions or headings in this Mortgage are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Mortgage.

IN WITNESS WHEREOF, the parties have executed this  
Mortgage as of the day and year first above written.

Grantor:  
ALLEN COUNTY AGGREGATES, INC.

By: \_\_\_\_\_

(SEAL)

Grantee:  
INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE, as  
Trustee

BY: \_\_\_\_\_

(SEAL)

Attest: \_\_\_\_\_

STATE OF INDIANA                    )  
                                      ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a notary public in and for said county and state, personally appeared \_\_\_\_\_ personally known to me to be the \_\_\_\_\_ of Allen County Aggregates, Inc., an Indiana corporation, and acknowledged the execution of the foregoing Mortgage and Security Agreement for and on behalf of said corporation.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

(SEAL)

My commission expires:

\_\_\_\_\_

My county of residence is:

\_\_\_\_\_

STATE OF INDIANA     )  
                              ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a notary public in and for said county and state, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to be to be a \_\_\_\_\_ and \_\_\_\_\_, respectively, of Indiana Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana, and acknowledged the execution of the foregoing Mortgage and Security Agreement for and on behalf of said Bank.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1981.

\_\_\_\_\_  
(Written Signature)

\_\_\_\_\_  
(Printed Signature)

Notary Public

(SEAL)

My commission expires:

My county of residence is:

\_\_\_\_\_  
This instrument prepared by:

David A. Rogers  
Peck, Shaffer & Williams  
2200 First National Bank Center  
Cincinnati, Ohio 45202



EXHIBIT A

THE PROJECT

[to be completed]

EXHIBIT A

THE PROJECT

[to be completed]

EXHIBIT B

PROJECT SITE

[to be completed]

Prior Deed References: \_\_\_\_\_

EXHIBIT B

PROJECT SITE

[to be completed]

Prior Deed References: \_\_\_\_\_

DRAFT: 1042b  
9/15/81

G U A R A N T Y   A G R E E M E N T

Among

PAUL L. EICKHOFF, LYNN R. BUNSOLD

and

INDIANA BANK AND TRUST COMPANY OF FORT WAYNE  
AS TRUSTEE

---

RELATING TO

CITY OF FORT WAYNE, INDIANA

\$920,000

ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS

(ALLEN COUNTY AGGREGATES, INC. PROJECT)

---

Dated as of October 1, 1981

## GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT dated as of October 1, 1981, between PAUL L. EICKHOFF and LYNN R. BUNSOLD, collectively (the "Guarantors"), and INDIANA BANK AND TRUST COMPANY OF FORT WAYNE, a bank incorporated under the laws of the State of Indiana, as trustee, together with any successor trustee serving as such under the Indenture, as hereinafter identified (the "Trustee"), is made under the following circumstances:

A. The individual Guarantors are stockholders of Allen County Aggregates, Inc., an Indiana corporation (the "Company"), and own \_\_\_% of the outstanding common stock of the Company.

B. Allen County Aggregates, Inc. will manage the Project, as defined in the Loan Agreement referred to below.

C. The Company and the City of Fort Wayne, Indiana, an Indiana municipal corporation and political subdivision (the "Issuer"), are entering into a Loan Agreement of even date herewith (the "Loan Agreement") whereby the Issuer will issue its Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project) in the aggregate principal amount of \$920,000 (the "Bonds"), the net proceeds of which will be loaned to the Company to finance costs of the Project, as defined in the Loan Agreement.

D. The Bonds will be issued pursuant to the provisions of the Indenture, as defined in the Loan Agreement, and the Company has requested the Original Purchaser, as defined in the Loan Agreement, to purchase the Bonds in accordance with the provisions of a Bond Purchase Agreement of even date herewith among the Issuer, the Company, the Original Purchaser and the Trustee (the "Bond Purchase Agreement").

E. Pursuant to the Loan Agreement, the Company will execute and deliver to the Issuer its promissory note (the "Note"), which Note will be assigned to the Trustee, and as security for the repayment of the Note and the Bonds the Company and the Trustee will enter into a Mortgage and Security Agreement of even date herewith (the "Mortgage") (the Loan Agreement, Note, Mortgage, Indenture, Bonds, Bond Purchase Agreement and any assignments of any of the foregoing being sometimes hereafter collectively referred to as the "Loan Documents" and individually as the "Loan Document").

F. The Original Purchaser has required, as a prerequisite to its purchase of the Bonds, that the Guarantors execute and deliver this Guaranty Agreement, and the Guarantors are willing to execute and deliver this Guaranty Agreement in order to achieve interest cost and other savings which will inure to the benefit of the Guarantors.

NOW, THEREFORE, in order to induce the Original Purchaser and any successor holders of the Bonds to purchase the Bonds, the Guarantors do hereby jointly and severally covenant and agree with the Trustee, for the benefit of all who at any time become holders of the Bonds, as follows:

## ARTICLE I

### COVENANTS, AGREEMENTS AND REPRESENTATIONS

Section 1.1. The Guarantors hereby unconditionally guarantee to the Trustee, for the benefit of the Original Purchaser and any subsequent holder of the Bonds (a) the full and prompt payment of the principal installments of and premium, if any, on the Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call for redemption, amortization or otherwise, (b) the full and prompt payment of the interest installments on the Bonds when and as the same shall become due, (c) the full and prompt payment by the Company of any and all sums required to be paid by it pursuant to Section 4.1(d) and 6.3 of the Loan Agreement, and (d) the full and prompt payment and performance by the Company of each and every other obligation of the Company under the Loan Documents or any of them. For purposes of this Guaranty Agreement, any amount required to be paid pursuant to clause (c) above shall be deemed to constitute a premium on the Bonds and shall be paid to the Trustee for deposit in the Bond Fund. All payments by the Guarantors hereunder shall be made in lawful money of the United States of America. Each and every default in payment of the principal of, premium, if any, or interest on the Bonds shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

Section 1.2. The obligations of the Guarantors under this Guaranty Agreement shall be absolute and unconditional and, except as otherwise provided in Section 1.1 hereof, shall remain in full force and effect until the entire principal of, premium, if any, and interest on the Bonds shall have been paid and discharged in full, and such obligations shall not be released, discharged, affected, modified or impaired by reason of the happening from time to time of any event, including without limitation any one or more of the following:

(a) the compromise, settlement, release, discharge or termination of any or all of the obligations, covenants or agreements of the Issuer or the Company under any Loan Document, by operation of law or otherwise, except as may result from payment in full of the Bonds as to principal, interest and premium, if any; or

(b) failure to give notice to the Guarantors of the occurrence of an event of default under the terms and provisions of any Loan Document; or



(c) except as may be provided in Section 2.2 hereof, the waiver of the payment, performance or observance by the Issuer or the Company of any of its obligations, covenants or agreements contained in any Loan Document; or

(d) the extension of the time for payment of principal of, premium, if any, or interest on any installment of the Bonds or the Note or of the time for performance of any other obligation, covenant or agreement under or arising out of any Loan Document or this Guaranty Agreement or the extension or the renewal if any thereof; or

(e) the modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in any Loan Document in accordance with the provisions thereof; or

(f) the taking of or omission to take any action under any Loan Document or this Guaranty Agreement; or

(g) any invalidity or unenforceability of any term or provision of any Loan Document, or any loss or release or substitution of, or other dealing with, the Bonds or any security created by the Mortgage or otherwise; or

(h) any failure, omission or delay on the part of the Issuer, the Trustee or any holder of any of the Bonds to enforce, assert or exercise any right, power or remedy conferred in this Guaranty Agreement or in any Loan Document, or any other act or acts on the part of the Issuer, the Trustee or any holder of any of the Bonds; or

(i) any failure or loss of title with respect to the Company's interest in the Project or Project Site or any part thereof, or any damage to or destruction or condemnation of the Project or Project Site or any part thereof; or

(j) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the Guarantors, the Company or the Issuer, or any of the assets of any of them, or any allegation or invalidity or contest of the validity of this Guaranty Agreement in any such proceedings; or

(k) to the extent permitted by law, the release or discharge of the Guarantors from the performance or observance of any obligation, covenant or agreement contained in this Guaranty Agreement by operation of law; or

(l) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guaranty Agreement; or

(m) any other event, circumstance, right, claim or defense of any character whatsoever, whether or not similar to the foregoing.

Section 1.3. No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature (excepting payment in fact) which the Guarantors have or may have against the Issuer, the Trustee or any holder of the Bonds shall limit or in any way affect the Guarantors' obligations under Section 1.1 hereof.

Section 1.4. In the event of any default in the payment of principal of or premium, if any, or interest on the Bonds when and as the same shall become due, whether at the stated maturity thereof, by acceleration, call of redemption, amortization or otherwise, or in the event of any other default by the Company under any of the Loan Documents, the Trustee shall have the right to proceed first and directly against the Guarantors under this Guaranty Agreement without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by the Issuer or the Trustee. To the extent that the Guarantors shall make any payments required of the Company under any Loan Document or shall perform any obligation required of the Company under any Loan Document, the Guarantors shall be subrogated to the rights of the Issuer and the Trustee against the Company with respect to such payments or such performance. To the extent that the Guarantors shall make any payments to the Issuer or the Trustee required of the Company under any Loan Document and the Company shall also make such payments to the Issuer or the Trustee, the amounts so paid by the Guarantors equal to the amount so paid by the Company shall be refunded to the Guarantors.

Before taking any action hereunder, the Trustee may require that a satisfactory indemnity bond be furnished by the holder of any Bonds seeking enforcement of this Guaranty Agreement for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default, by reason of any action so

taken. No holder or holders of Bonds aggregating less than 25% in principal amount of the then outstanding Bonds may sue the Guarantors hereunder without first requesting the Trustee to sue and offering satisfactory indemnity to the Trustee.

Section 1.5. The Guarantors hereby expressly waive notice from the Original Purchaser or the holders from time to time of any of the Bonds of their acceptance of and reliance upon this Guaranty Agreement. The Guarantors agree to pay all the reasonable costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by the Trustee or the Original Purchaser (or any subsequent holder) in enforcing or attempting to enforce this Guaranty Agreement following any default on the part of the Guarantors hereunder, whether the same shall be enforced by suit or otherwise.

Section 1.6. This Guaranty Agreement is entered into by the Guarantors with the Trustee for the benefit of the holders from time to time of the Bonds, all of whom shall be entitled to enforce performance and observance of this Guaranty Agreement to the same extent and subject to the same limitations provided for the enforcement of remedies under the Loan Documents upon the occurrence of any default thereunder.

Section 1.7. The Guarantors hereby represent as follows:

(a) this Guaranty Agreement is a legal, valid and binding obligation of the Guarantors, enforceable in accordance with its terms;

(b) the execution, delivery, and performance of this Guaranty Agreement does not and will not violate or contravene any authority having the force of law, or any indenture, agreement or other instrument to which any Guarantor is a party or by which any Guarantor or any of their properties or assets are or may be bound; and

(c) there is no action or proceeding at law or in equity by or before any court or governmental instrumentality or agency now pending which materially adversely affects the condition (financial or otherwise) of the Guarantors.

## ARTICLE II

### MISCELLANEOUS

Section 2.1. The obligations of the Guarantors hereunder shall arise absolutely and unconditionally when the Bonds shall have been issued and delivered by the Issuer to the Original Purchaser in accordance with the terms of the Bond Legislation, and shall terminate when the principal of, premium, if any, and interest on the Bonds shall have been paid in full, or earlier as and to the extent hereinbefore expressly provided.

Section 2.2. No remedy herein conferred upon or reserved to the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Guaranty Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty Agreement should be breached by the Guarantors and thereafter duly waived by the Trustee, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 2.3. No waiver, amendment, release or modification of this Guaranty Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties hereto.

Section 2.4. This Guaranty Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, and may be executed simultaneously in several counterparts, each of which shall be regarded as an original, and all of which together shall constitute but one and the same instrument.

Section 2.5. This Guaranty Agreement constitutes a separate instrument, enforceable in accordance with its terms, and neither this Guaranty Agreement nor the obligations of the Guarantors hereunder shall, under any circumstance or in any legal proceedings, be deemed to have merged into or with any other agreement or obligation of the Guarantors.

Section 2.6. In case any clause, provision or section of this Guaranty Agreement, or any covenant, stipulation, obligation, agreement, act, or action, or part thereof, made, assumed, entered into, or taken under this Guaranty Agreement, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity, or inoperability shall not affect the remainder thereof or any other clause, provision or section or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken thereunder, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein, nor shall such illegality or invalidity or inoperability of any application thereof affect any legal and valid and operable application thereof, from time to time, and each such clause, provision or section, covenant, stipulation, obligation, agreement, act, or action, or part thereof shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

IN WITNESS WHEREOF, the Guarantors have each executed this Guaranty Agreement as of the day and year first above written.

(GUARANTORS)

\_\_\_\_\_  
PAUL L. EICKHOFF

\_\_\_\_\_  
LYNN R. BUNSOLD

(SEAL)

Accepted this \_\_\_\_\_ day of  
\_\_\_\_\_, 1981, by

INDIANA BANK AND TRUST  
COMPANY OF FORT WAYNE, as  
Trustee

By \_\_\_\_\_  
(Title)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$920,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE BONDS (ALLEN COUNTY AGGREGATES, INC. PROJECT) OF THE CITY OF FORT WAYNE, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO ALLEN COUNTY AGGREGATES, INC. TO ASSIST IN THE FINANCING OF AN ECONOMIC DEVELOPMENT FACILITY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT, TRUST INDENTURE, BOND PURCHASE AGREEMENT AND ASSIGNMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Wayne, Indiana (the "Issuer"), is a municipal corporation and political subdivision in and of the State of Indiana, and by virtue of the laws of the State of Indiana, including Indiana Code, Title 18, Article 6, Chapter 4.5, is authorized and empowered among other things (a) to make a loan for the acquisition, construction and installation of an economic development facility within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loan, and (c) to enact this Bond Legislation and execute and deliver the assignments and agreements hereinafter identified; and

WHEREAS, this Common Council has determined and does hereby confirm that the acquisition, construction and installation of the Project, as hereinafter defined, will promote the welfare of the people of the Issuer, create or preserve jobs and employment opportunities, and assist in the development of economic, manufacturing and industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount of \$920,000, will be acting in a manner consistent with and in furtherance of the provisions of Indiana Code, Title 18, Article 6, Chapter 4.5;

BE IT ORDAINED by the Common Council of the City of Fort Wayne, Indiana:

Section 1. Definitions. In addition to the words and terms defined in the recitals and elsewhere in this Bond Legislation and in the Indenture, the words and terms defined in this Section shall have the meanings herein specified unless the context or use clearly indicates another or different meaning or intent. Those words and terms not expressly defined

herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Agreement, as hereinafter defined.

"Act" means Indiana Code, Title 18, Article 6, Chapter 4.5 and amendments and supplements thereto such as are hereafter adopted.

"Agreement" or "Loan Agreement" means the Loan Agreement dated as of October 1, 1981 between the Issuer and the Company, and any permitted amendments or supplements thereto.

"Bonds" means the Bonds authorized in Section 3 hereof, including any Bond issued in exchange therefor as provided in the Indenture.

"Bond Fund" means the Bond principal, premium and interest fund created by Section 8 hereof.

"Bondholder" or "Holder" means, initially, the Original Purchaser, and any subsequent bearer of a coupon Bond which is not registered as to principal or the principal of which is registered to bearer, or the person in whose name a registered Bond is registered; provided that, solely as used in the definitions of "Determination of Taxability" and "Event of Taxability", the term "Bondholder" also includes the owner of an undivided participation interest in any Bond.

"Bond Legislation" means this ordinance.

"Bond Purchase Agreement" means the Bond Purchase Agreement dated as of October 1, 1981 among the Issuer, the Trustee, the Company and the Original Purchaser, and any permitted amendments or supplements thereto.

"Bond Service Charges" for any time period means the principal, including any amortization or redemption requirements, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds for such time period. Any "late charge" and any payment required to be made on the Bonds with interest at the Interest Rate for Advances shall also constitute a Bond Service Charge.

"Code" means the Internal Revenue Code of 1954, as amended, and regulations promulgated thereunder.



"Company" means Allen County Aggregates, Inc., an Indiana corporation, and its successors and assigns, including any surviving, resulting or transferee entity as provided in Section 5.14 of the Agreement.

"Completion Date" means the date of completion of the acquisition, installation and construction of the Project as that date shall be certified as provided in Section 3.5 of the Agreement.

"Construction Fund" means the fund created by Section 7 hereof.

"Coupon" or "Interest Coupon" means a coupon issued hereunder evidencing an installment of interest on a coupon Bond.

"Coupon Bond Registered as to Principal" means any coupon Bond at the time registered as to principal in the name of the Bondholder.

"Determination of Taxability" means (i) the filing by the Company or any other person or entity of any statement, supplemental statement or other tax schedule, return or document (whether pursuant to Treasury Regulations §1.103-10(b)(2)(vi)(c) or otherwise) which discloses that an Event of Taxability has occurred, or (ii) the final assertion by the Internal Revenue Service or any agent thereof to the effect that interest on the Bonds is includable in the gross income for federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code) or (iii) the final adoption of legislation or regulations or a final determination, decision, decree or ruling of any judicial or administrative authority which has the effect of requiring interest on the Bond to be included in the gross income for Federal income tax purposes of any Holder (other than a Holder who is a "substantial user" of the Project or a "related person", as those terms are used in Section 103 of the Code). For purposes of clause (iii) in the preceding sentence, a decision, decree or ruling by any judicial or administrative authority shall be considered final upon the expiration or waiver of all periods for judicial review or appeal, as the case may be.

"Eligible Investments" means (i) any bonds or other direct obligations of the United States of America; (ii) obligations of the Federal National Mortgage Association or the Government National Mortgage Association; (iii) obligations of the Federal Intermediate Credit Banks; (iv) obligations of

Federal Banks for Cooperatives; (v) obligations of Federal Land Banks; (vi) obligations of the Federal Financing Bank; (vii) bank repurchase agreements issued by a Federal Reserve member bank, including the Trustee, fully secured by obligations of any of the kinds specified in clauses (i) through (vi) above; (viii) time deposits, certificates of deposit, documented discount notes secured by stand-by letters of credit, bank reverse repurchase agreements or bankers acceptances of banks or trust companies, including the Trustee, organized under the laws of the United States of America or any state thereof, which have combined capital and earned and unearned surplus of at least \$25,000,000 in dollars of the United States of America; (ix) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody's Investors Service, Inc., or Standard & Poor's Corporation, respectively, or their successors, or both, if rated by both; or (x) obligations, of any state of the United States of America or of any political subdivision or other instrumentality of any such state, which are rated at least "A" or its equivalent by either Moody's Investors Service, Inc., or Standard & Poor's Corporation, or their successors, or both, if rated by both.

"Event of Taxability" means the occurrence of circumstances which a Determination of Taxability shall have found to have occurred, or which shall constitute a Determination of Taxability, and which results in the interest payable on the Bond becoming includable in the gross income for Federal income tax purposes of any Bondholder (other than a Bondholder who is a "substantial user" of the Project or a "related person" as those terms are used in Section 103 of the Code), such occurrence of circumstances relating to a specific point in time. Without limiting the generality of the foregoing, the incurring of capital expenditures in excess of those permitted under Section 103(b)(6)(D) of the Code, thereby causing any interest payable on the Bond to be includable in the gross income of any Bondholder under the Code, shall constitute an Event of Taxability.

"Executive" means the Mayor of the Issuer.

"Final Maturity Date" means October 1, 2001.

"Fiscal Officer" means the Treasurer of the Issuer.

"Indenture" means the Trust Indenture dated as of October 1, 1981, between the Issuer and the Trustee, including this Bond Legislation as a part thereof, and any permitted amendments or supplements thereto.

"Issuing Authority" means the Common Council of the Issuer.

"Interest Payment Date" means the first day of each October and April, commencing April 1, 1982 and continuing semi-annually thereafter.

"Interest Rate for Advances" means the annual rate of interest which is equal to twenty-one percent (21%); provided that in no event shall the Interest Rate for Advances exceed the rate permitted by law.

"Legal Officer" means the City Attorney of the Issuer.

"Mandatory Redemption Date" means October 1 of each year, beginning October 1, 1982.

"Mandatory Sinking Fund Requirements" means amounts required by the Bond Legislation to be deposited in the Bond Fund for the purpose of retiring, on a specified date, principal maturities of Bonds which by their terms are due and payable, if not called for prior redemption, at a subsequent date.

"Mortgage" means the Mortgage and Security Agreement dated as of October 1, 1981, whereby the Company has granted to the Trustee, as security for payment of the Note and the Bonds, a mortgage on and security interest in the Project and the Project Site, and any permitted amendments or supplements thereto.

"Note" means the Promissory Note, in the form attached as Exhibit C to the Loan Agreement, issued by the Company to the Issuer concurrent with the delivery of the Loan Agreement.

"Note Payments" means any and all payments of principal of and interest, and prepayment premiums or Additional Payments, if any, on the Note.

"Original Principal Sum" means \$920,000, the aggregate original face amount of the Bonds.

"Original Purchaser" means The Cincinnati Insurance Company, an Ohio corporation (as to the Bonds maturing October 1, 2001), and \_\_\_\_\_, an individual (as to the Bonds maturing October 1, 1986), collectively.

"Outstanding Bond" or "Bond outstanding" or "outstanding" as applied to the Bonds, means, as of any date, any Bond which has been authenticated and delivered, or is then being delivered, by the Trustee under the Indenture except:

(a) Any Bond surrendered and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

(b) Any Bond for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date with the Trustee (whether upon or prior to the Final Maturity Date or the redemption date of any such Bond), or which is deemed to have been paid and discharged pursuant to the provisions of Section 8.02 of the Indenture; provided that if such Bond is to be redeemed prior to the Final Maturity Date, notice of such redemption shall have been given or arrangements satisfactory to the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Any Bond in lieu of which another has been authenticated (or payment, when due, of which is made without replacement) under Section 2.04 of the Indenture:

and also except that

(d) For the purpose of determining whether the holders of the requisite principal amount of Bonds have made or concurred in any notice, request, demand, direction, consent, approval, order, waiver, acceptance, appointment or other instrument or communication under or pursuant to this Indenture, Bonds owned by or for the account of the Company or any person owned, controlled by, under common control with or controlling the Company shall be disregarded and deemed to be not outstanding. The term "control" (including the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. Beneficial ownership of 5% or more of a class of securities having general voting power to elect a majority of the board of directors of a corporation shall be conclusive evidence of control of such corporation.

"Payment in Full of the Bonds" means the first date when the Bonds are no longer deemed to be outstanding pursuant to Section 8.02 of the Indenture.

"Person" means natural persons, firms, associations, corporations and public bodies.

"Pledged Receipts" means (a) the Note Payments, (b) subject to the provisions of Sections 3.04, 4.02 and 8.02 of the Indenture with respect to the Trustee holding moneys for the benefit of any Bondholder, all other moneys received by the Issuer, or the Trustee for the account of the Issuer, in respect of the Agreement or the Project, except certain expense, reimbursement and indemnity payments which are, pursuant to the provisions of the Agreement, to be made by the Company directly to the Issuer or the Trustee, (c) any moneys on deposit in the Construction Fund, the Bond Fund or the Reserve Fund and (d) the income and profit from the investment of any moneys while held in the Construction Fund, the Bond Fund or the Reserve Fund.

"Project" means the Project Site and the real, personal, or real and personal property, including undivided interests or other interests therein, identified in Exhibit A to the Agreement, or acquired, constructed or installed as a replacement or substitution therefor or an addition thereto, or as may result from a revision of the plans and specifications therefor in accordance with the provision of the Loan Agreement or Mortgage.

"Project Site" means the real estate and interests in real estate constituting the site of and part of the Project, as described in Exhibit B to the Agreement.

"Registered Bonds" means Bonds registered in the name of the holder, including coupon Bonds registered as to principal (except to bearer) and fully registered Bonds; and "fully registered Bonds" means Bonds without coupons registered as to both principal and interest.

"Reserve Fund" means the Reserve Fund created in Section 8(a) hereof.

"Reserve Fund Payment" means as to the Bonds, the amount payable by the Borrower to the Trustee, as determined by Section 4.1(d) of the Loan Agreement, which amount shall be deposited in the Reserve Fund and used by the Trustee as provided herein.

"State" means the State of Indiana.

"Taxable Rate of Interest" means the Interest Rate for Advances.

"Trustee" means the Trustee at the time acting as such under the Indenture, originally Indiana Bank and Trust Company of Fort Wayne, as Trustee, and any successor Trustee as determined or designated under or pursuant to the Indenture.

Any reference herein to the Issuer, the Issuing Authority, or to any officer or official thereof, shall include those succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing such functions. Any reference herein to any other person or entity shall include his or its respective successors and assigns. Any reference to a section or provision of the Code, the Act or to a section, provision or chapter of the Indiana Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded; provided, however, that no such change shall alter the obligation to pay the Bond Service Charges in the amounts and manner, at the times, and from the sources provided in this Bond Legislation and the Indenture, except as otherwise herein permitted, or shall be deemed applicable by reason of this provision if such change would in any way constitute an impairment of the rights of the Issuer or the Company under the Agreement.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, any pronoun shall be deemed to cover all genders, and the terms "herein", "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation and the Indenture and not solely the portion hereof in which any such word is used.

#### Section 2. Determination of Issuing Authority.

Pursuant to the Act, the Issuing Authority hereby finds and determines that the Project is an "economic development facility" as defined in the Act and that all actions required under the Act to be taken by the Issuer, the County of Allen, Indiana, the Trustee and the Company prior to the issuance of the Bonds have been duly authorized and completed.

Section 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Bonds in the aggregate principal amount of \$920,000 for the purpose of financing costs of acquiring, constructing and installing the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreement and the Bond Purchase Agreement. The Bonds shall be designated "Economic Development First Mortgage Revenue Bonds (Allen County Aggregates, Inc. Project)".

Section 4. Terms of Bonds. The Bonds shall initially be issued in coupon or fully registered form, or both, as may be requested by the Original Purchaser thereof,

shall be exchangeable for fully registered or coupon Bonds in the manner and on the terms provided in the Indenture, shall be numbered from 1 upwards, in the case of coupon Bonds, and from R-1 upwards, in the case of fully registered Bonds, and shall be in substantially the forms set forth therefor in the Indenture.

Bonds in coupon form shall be in the denomination of \$5,000 each, shall be registrable as to principal, and shall be dated as of October 1, 1981. Bonds in fully registered form shall be in the denominations of \$5,000 and any multiple thereof, and shall be of a single maturity of the same series; provided that the Fiscal Officer with the approval of the Trustee may authorize issuance of one or more fully registered Bonds representing more than one maturity of the same series with appropriate changes in the form of such a Bond to cover more than one maturity, such approval and authorization to be evidenced as provided in the Indenture.

Each Bond in fully registered form shall be dated as of the date of its delivery or exchange; provided that if at the time of authentication of any fully registered Bond interest is in default thereon, such Bond shall be dated as of the date to which interest has been paid, and that if fully registered Bonds are initially delivered to the Original Purchaser (or any of them), such fully registered Bonds shall be dated as of October 1, 1981.

The Bonds being delivered to The Cincinnati Insurance Company, as Original Purchaser, aggregating \$900,000 in principal amount, mature October 1, 2001 and shall bear interest from their respective dates at a fixed rate of twelve percent (12%) per annum, and the Bonds being delivered to \_\_\_\_\_, as Original Purchaser, aggregating \$20,000 in principal amount, mature October 1, 1986 and shall bear interest from their respective dates at a fixed rate of twelve percent (12%) per annum as set forth in the following table. Interest on the Bonds shall be payable semiannually on April 1 and October 1 of each year, beginning April 1, 1982. Upon any transfer and surrender of the Bond in accordance with the provisions of the Indenture, the Issuer shall execute and deliver a new Bond in exchange therefor as provided in the Indenture.

Bonds maturing October 1, 2001, are subject to mandatory sinking fund redemption, by lot, without action by the Issuer, on October 1, 1982, and on each October 1 thereafter to and including October 1, 2000, in the principal amount of \$45,000 each year, at 100% of such principal amount, plus accrued interest to the redemption date.

The Bonds maturing October 1, 2001 are also subject to optional redemption, in whole or in part by lot, prior to maturity by the Issuer at the direction of the Company on October 1, 1991, or on any Interest Payment Date thereafter, in the event of exercise by the Company of its option to prepay the Note in full or in part as provided by the first paragraph of Section 6.1 of the Loan Agreement at the redemption prices (expressed as percentages of the principal amounts thereof) set forth below, plus accrued interest to the redemption date. The redemption date in any such event shall be the date set by the Company for prepayment of the Note in accordance with the provisions of such paragraph:

<u>Year</u>	<u>Principal Amount Due</u>	<u>Interest Rate(s)</u>	<u>Optional Redemption Price Commencing October 1</u>
1986	\$20,000	12%	
1991			106%
1992			105-1/2%
1993			105%
1994			104-1/2%
1995			104%
1996			103-1/2%
1997			103%
1998			102-1/2%
1999			102%
2000	900,000	12%	101-1/2%
2001			

The Bonds are also subject to optional redemption, in whole or in part, by lot, in the event of the exercise by the Company of its options to prepay the Note in whole or in part as provided by the fifth paragraph of Section 6.1 of the Loan Agreement, at a redemption price of 100% of principal balance of the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date.

The Bonds shall also be callable for redemption in whole or in part by lot, upon occurrence of any of the circumstances which operate to require prepayment of the Note in whole or in part by the Company in accordance with the provisions of Section 6.2 of the Loan Agreement. The redemption date in any of such events shall be the date set by the Company, (or in default thereof, by the Trustee) for the prepayment of the Note in whole or in part in accordance with the provisions of the Loan Agreement. The redemption price in any of such events shall be 100% of the principal balance of



the Bonds to be redeemed on the date of redemption, plus accrued interest to the redemption date; provided that upon any call for redemption of the Bonds due to a Determination of Taxability, the redemption price shall be increased by an amount equal to the difference between (a) (i) the aggregate amount of interest which would have been payable on the Bonds if the interest rate on the Bonds, commencing on the date of the Event of Taxability, had been the Taxable Rate of Interest, plus (ii) any penalties and interest payable by the Holders to any taxing authority as a result of the loss of the tax-exempt status of interest on the Bonds, plus (iii) all attorneys fees and other costs incurred by the Holders in contesting or resisting the loss of the tax-exempt status of interest on the Bonds, and (b) the aggregate amount of interest actually paid on the Bonds to the redemption date.

The obligation of the Issuer to make monthly payments of principal and interest on the principal amount of the Bonds which remains outstanding after any partial redemption shall not be affected by such partial redemption, such partial redemption operating instead to pay and redeem the principal of the Bonds at dates earlier than the originally scheduled principal amortization dates, in inverse chronological order.

Notice from the Company to the Trustee that the Note is to be prepaid in whole or in part pursuant to the Agreement shall constitute the direction of the Issuer to the Trustee to call some or all, as the case may be, of the then outstanding Bonds, and no separate notice from the Issuer to the Trustee shall be required.

When less than the entire unmatured portion of the Bonds shall be called for redemption at any time or from time to time (otherwise than pursuant to any mandatory sinking fund redemption provisions hereof) the selection of such Bonds or portions of fully registered Bonds to be called shall be made by lot by the Trustee in such manner as the Trustee may determine. When Bonds shall be called for redemption pursuant to mandatory sinking fund redemption provisions hereof, they shall be called by lot. If optional redemption of Bonds is to take place in any of the years 1991 to 2001, both inclusive, the Bonds to be so redeemed by optional redemption shall be selected prior to the selection of the Bonds to be redeemed on the same date by operation of the mandatory redemption provisions hereof.

Notice of the call for any redemption of Bonds, identifying by designation, letters, numbers, or other distinguishing marks, the Bonds (in amounts of \$5,000 or any multiple thereof) or portions of fully registered Bonds to be

redeemed, the redemption price to be paid, the date fixed for redemption and the place or places where the amounts due upon such redemption are payable, shall be given by the Trustee on behalf of the Issuer by at least two publications in a newspaper or financial journal of general circulation published in the City and State of New York, the first such publication to be not less than thirty days prior to the redemption date, and, in the case of the redemption of Bonds at the time in the form of registered Bonds, by mailing a copy of the redemption notice by first class mail at least thirty days prior to the date fixed for redemption to the registered owner of each such registered Bond to be redeemed at the address shown on the registration books kept by the Trustee; provided, however, that failure to give such notice by mailing, or any defect in such notice, shall not affect the validity of any proceedings for the redemption of the Bonds. If, because of the temporary or permanent suspension of the publication or general circulation of the appropriate newspapers or financial journals or for any other reason, it is impossible or impractical to publish such notice of call for redemption in the manner herein provided, then such publication in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient publication of notice. If all of the Bonds to be redeemed are at the time in the form of registered Bonds, notice of the call for redemption may be given by mailing a copy of the redemption notice by registered or certified mail at least thirty days prior to the date fixed for redemption to the holder or holders thereof at the address shown on the registration books kept by the Trustee and newspaper or financial journal publication of the notice of the call for redemption need not be given; provided, however, that failure to give such notice to any Bondholder by mailing, or any defects in such notice to any Bondholder, shall not affect the validity of the proceedings for the redemption of any of the other Bonds. The holder or holders of Bonds may waive any notice of redemption in writing, and in such event, no notice of any kind need be given with respect to the Bonds of such holder or holders to be so redeemed.

Bond Service Charges on Bonds in coupon form, other than principal of or any redemption premium on such Bonds registered as to principal (except to bearer), shall be payable, without deduction for services as paying agent, at the corporate trust office of the Trustee.

All Bond Service Charges on registered Bonds shall be payable by check or draft drawn upon the Trustee and mailed or delivered to the Bondholder at its address as shown on the Bond registration books to be kept by the Trustee; provided however that the final Bond Service Charges shall be payable at the

corporate trust office of the Trustee upon presentation and surrender of the Bond at such office. All payments of Bond Service Charges shall be made in lawful money of the United States of America, without deduction for services as paying agent. If any Bond Service Charges are not paid when due, the Issuer shall also pay to the Trustee, for distribution to the Bondholder, a "late charge" equal to 4% of such Bond Service Charges to cover the extra expenses involved in handling delinquent payments. In addition, upon acceleration of the Bond, the amounts payable upon such acceleration, together with interest thereon at the Interest Rate for Advances from the date of acceleration, shall continue as an obligation of the Issuer until paid. All payments from the Issuer referred to herein shall be payable solely from the Pledged Receipts.

All Bonds shall bear such designation as may be necessary to distinguish them from Bonds of any other series. Subject to provisions of the Bond Legislation, Bonds shall be issued as coupon Bonds registrable as to principal or as fully registered Bonds, and may be exchanged as between forms, all as provided in the Indenture. All Bonds shall be negotiable instruments, subject to applicable provisions for registration, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law.

If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Trustee so as to be available therefore, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to the redemption date shall be void.

The Bonds shall be executed on behalf of the Issuer by the Executive and by the Fiscal Officer, provided that any or all of such signatures may be facsimiles, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on any Bond, shall cease to be such officer before the issuance, authentication or delivery of the Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

Section 5. Security for the Bonds. As provided herein, the Bonds shall be payable solely from the Bond Fund and the Pledged Receipts and secured by a pledge of and lien on

the Pledged Receipts and the Bond Fund, and shall be further secured by the Mortgage, the Guaranty Agreement (as defined in the Loan Agreement) and the Indenture. Neither the Bond Legislation, the Bonds, the Indenture, the Loan Agreement, nor the Bond Purchase Agreement shall represent or constitute a debt or pledge of the faith and credit or the taxing power of the Issuer, and each Bond shall contain on the face thereof a statement to that effect.

Section 6. Sale of Bonds. The Bonds are hereby sold and awarded to each Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price of 100% of the principal amount of the Bonds to be purchased by it, aggregating \$920,000, plus accrued interest from the date of the Bonds. The Executive and the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with each Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to such Original Purchaser, and to take all steps necessary to effect due execution, authentication and delivery to each Original Purchaser of the Bonds purchased by it under the terms of this Bond Legislation, the Indenture and the Bond Purchase Agreement. It is hereby determined that the price for and the terms of the Bonds, and the sale thereof, all as provided in this Bond Legislation and the Bond Purchase Agreement, are in the best interest of the Issuer and consistent with all legal requirements.

Section 7. Allocation of Proceeds of Bond - Construction Fund. There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund in the name of the Issuer to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Construction Fund". All of the sums from the sale of the Bonds, except accrued interest on the Bonds, shall be deposited in the Construction Fund and disbursed by the Trustee in accordance with the Loan Agreement. The Trustee is authorized and directed to issue its check for each such disbursement. The moneys to the credit of the Construction Fund (including the proceeds from the sale of investments thereof) shall, pending applications thereof as above set forth, be subject to a lien and charge in favor of the Holder.

Section 8. Source of Payment - Bond Fund. As provided in the Agreement, Note Payments, sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in the Bond Fund.

There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Bond Fund". There is also hereby created two separate subaccounts in the Bond Fund, to be designated the "Principal Account" and the "Interest Account". Subject to the provisions of the Mortgage, the Bond Fund and the moneys therein are hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at stated maturity or by amortization or redemption, all as provided herein and in the Indenture and the Agreement, with Bond Service Charges representing repayment of principal on the Bonds, whether at maturity, or by mandatory or optional redemption, being paid only from the Principal Account and with Bond Service Charges representing all other amounts being paid only from the Interest Account, except as provided in Section 8.02 of the Trust Indenture relating to defeasance of the Bonds.

Except as otherwise provided in this Bond Legislation or in the Mortgage, and except for payments to be deposited into the Reserve Fund, there shall be deposited into the Bond Fund, as and when received, all Pledged Receipts, as follows: All portions of the Note Payments representing a payment of principal on the outstanding balance of the Note, all moneys from the Reserve Fund or investment of Reserve Fund moneys transferred from the Reserve Fund or otherwise credited to the Bond Fund and any other payments received by the Trustee to be used to repay principal on the Bonds, shall be deposited into the Principal Account, and all other Pledged Receipts shall be deposited into the Interest Account.

The Issuer covenants and agrees that, until Payment in Full of the Bonds, it will deposit or cause to be deposited in the Bond Fund Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that it will diligently and promptly proceed in good faith and use its best efforts to enforce the Agreement and that, should there be an event of default under the Agreement, the Issuer shall fully cooperate with the Trustee and with the Bondholder to fully protect the rights and security of the Bondholder hereunder. Nothing herein shall be construed as requiring the Issuer to use or apply to the payment of Bond Service Charges any funds other than the Bond Fund and the Construction Fund or revenues from any source other than Pledged Receipts.

The Issuer covenants and agrees, whenever the moneys and investments in the Bond Fund (or otherwise held by the Trustee for such purpose) are sufficient in amount to redeem

the entire principal amount of the Bonds then outstanding and to pay interest to accrue thereon to the date or dates of such redemption, and any applicable premiums, to take and cause to be taken, upon notification by the Company or the Trustee, the necessary steps to redeem the Bonds on the next succeeding redemption date or dates for which the required notice of call for redemption may be given.

Section 8(a). Reserve Fund. There is hereby created by the Issuer and ordered maintained, as a separate deposit account (except when invested as hereinafter provided) in the custody of the Trustee, a trust fund to be designated "City of Fort Wayne - Allen County Aggregates, Inc. Reserve Fund" (hereinafter called the "Reserve Fund"). As provided in Section 4.1(d) of the Agreement, Reserve Fund Payments are to be paid by the Company directly to the Trustee for the account of the Issuer and deposited in the Reserve Fund. There shall be deposited or credited to the Reserve Fund from the Reserve Fund Payments and from all other sources, including from income earned on the investment of monies credited to such Reserve Fund, an amount equal to not more than \$138,000, which is 15% of the Original Principal Sum and the reserve reasonably required by the Original Purchaser. Until the principal amount of the Reserve Fund shall have totaled \$138,000, the Trustee shall invest the monies in such Reserve Fund as provided in Section 10 hereof and shall accumulate such income in the Reserve Fund and add such income to the principal thereof. When the amount of the Reserve Fund shall have aggregated \$138,000, the Trustee shall credit all further income received from the investment thereof to the Principal Account of the Bond Fund to pay Bond Service Charges representing repayment of principal on the Bonds, whether at maturity, or by mandatory or optional redemption, to the fullest extent possible, on the next succeeding Interest Payment Date, Mandatory Redemption Date or maturity date.

If, on any Interest Payment Date, the balance in the Bond Fund is insufficient to pay the required Bond Service Charges, then the Trustee shall immediately transfer from the Reserve Fund to the Bond Fund an amount sufficient to make up such deficiency in the Bond Fund. With the approval of the Company, which approval shall not be unreasonably withheld, the Trustee may also make withdrawals from the Reserve Fund to pay the fees and expenses of the Trustee. After any such transfer as aforesaid, the Trustee may again receive and credit Reserve Fund Payments to the Reserve Fund until the amount thereof shall again total \$138,000.

Section 9. Covenants of Issuer. In addition to other covenants of the Issuer in the Bond Legislation and the Indenture, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond Service Charges on the Bonds on the dates, at the places and in the manner provided herein and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Agreement, Bond Purchase Agreement, the Indenture and the Bonds, and required therein to be observed and performed by the Issuer. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, and to provide the security for payment of the Bond Service Charges in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds, and the execution and delivery of the Indenture, the Bond Purchase Agreement, the Agreement and the assignment of the Note, have been or will be duly and effectively taken; and that the Bonds will be valid, binding and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, Indenture, the Bond Purchase Agreement, the Agreement and the Bonds is binding upon each such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duties required by such provision.

(c) Pledged Receipts. Except as otherwise provided in the Bond Legislation, Indenture, Bond Purchase Agreement and Agreement, the Issuer will not make any pledge or assignment of or create any lien or encumbrance upon the Construction Fund, the Bond Fund, the Reserve Fund or the Pledged Receipts, other than the pledge and assignment thereof under the Bond Legislation, Indenture and Agreement.

(d) Recordings and Filings. The Issuer will cooperate in causing all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges and assignments made by the Issuer to secure the Bonds, to be recorded or filed in such manner and in such places as and to the extent required by law in order to fully



preserve and protect the security of the Holder and the rights of the Trustee under the Indenture; and in pursuance thereof the Company has covenanted to cause to be delivered to the Trustee certain opinions of counsel, all as set forth in Section 5.11 of the Agreement.

(e) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all reasonable times be open to inspection by such employees, accountants or other agents of the Trustee as the Trustee may from time to time designate.

(f) Maintenance of Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on the part of the Issuer under the Agreement, and will take all actions within its authority to maintain the Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(g) List of Bondholders. To the extent that such information shall be made known to the Issuer under the terms of this paragraph, the Issuer will keep or arrange to have kept on file at the corporate trust office of the Trustee a list of names and addresses of the last known holders of Bonds payable to bearer. Any Bondholder may in a writing addressed to the Issuer or Trustee request that his name and address be placed on said list, which request shall include a statement of the principal amount of Bonds held by such holder and shall identify, by number and series designation, such Bonds. Neither the Issuer nor the Trustee shall be under any responsibility with regard to the accuracy of said list. At reasonable times and under reasonable regulations established by the Trustee, said list may be inspected and copied by the Company, or by the holders (or a designated representative thereof) of twenty-five percent or more in principal amount of Bonds then outstanding, such holding and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(h) Rights under Agreement. The Trustee, in its name or in the name of the Issuer, may, for and on behalf of the Bondholder, enforce all rights of the Issuer and all obligations of the Company under and pursuant to the Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.



(i) Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Bonds are delivered to the Original Purchaser, so that they will not constitute arbitrage bonds under Section 103(c) of the Code and the applicable regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, or any officer of the Company, and upon receipt of satisfactory indemnities from the Company, to give an appropriate certificate on behalf of the Issuer, for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to such Section 103(c) and regulations thereunder.

Section 10. Investment of Bond Fund, Construction Fund and Reserve Fund Money. Moneys in the Bond Fund, the Reserve Fund and the Construction Fund shall be invested and reinvested by the Trustee in any Eligible Investments, in accordance with and subject to any written orders, or oral orders confirmed promptly in writing, of the Authorized Company Representative with respect thereto, provided that investments of moneys in the Bond Fund shall mature or be redeemable at the option of the Trustee at the times and in the amounts necessary to provide moneys hereunder to pay Bond Service Charges as they fall due at stated maturity or by amortization or redemption, and that each investment of moneys in the Construction Fund shall in any event mature or be redeemable at the option of the Trustee at such time as may be necessary to make timely payments from such Fund. Subject to any such orders with respect thereto, the Trustee may from time to time sell such investments and reinvest the proceeds therefrom in Eligible Investments maturing or redeemable as aforesaid. Any such investments may be purchased from the Trustee. The Trustee shall sell or redeem investments standing to the credit of the Bond Fund to produce sufficient moneys hereunder at the times required for the purposes of paying Bond Service Charges when due as aforesaid. An investment made from moneys credited to the Bond Fund, the Reserve Fund or Construction Fund shall constitute part of that respective Fund and such respective Fund shall be credited with all proceeds of sale and income or loss from such investment, provided further that all investments of any moneys credited to the Principal Account or Interest Account of the Bond Fund shall constitute part of that respective Account, and such respective Account shall be

credited with all proceeds of sale and income or loss from such investment, subject to the restrictions set forth in Section 8(a) hereof with respect to the Reserve Fund. The Company has covenanted in the Agreement to restrict the use of the proceeds of the Bonds so that they will not constitute arbitrage bonds under the Code.

Section 11. Authorization of Agreement, Bond Purchase Agreement, Indenture and Assignment. In order to better secure the payment of the Bond Service Charges as the same shall become due and payable, the Executive and the Fiscal Officer are hereby authorized and directed to execute, acknowledge and deliver, on behalf of the Issuer, the Agreement, the Bond Purchase Agreement, the Indenture and the assignment of the Note, in substantially the forms submitted to this Issuing Authority, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the Legal Officer and by the persons executing the same. The approval of such changes by the Legal Officer and such members, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Agreement, the Bond Purchase Agreement, the Indenture and such assignment by such persons.

The Executive and Fiscal Officer and the Clerk of the Issuer are each hereby separately authorized to take any and all actions and to execute such financing statements, election statement, certificates and other instruments that may be necessary or appropriate in the opinion of the Legal Officer and bond counsel, in order to effect the issuance of the Bond and the intent of this Bond Legislation. The Clerk of the Issuer, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds.

This Bond Legislation shall constitute a part of the Indenture as therein provided and for all purposes of the Indenture, including, without limitation, application to this Bond Legislation of the provisions in the Indenture relating to amendment, modification and supplementation, and provisions for severability.

Section 12. Effective Date. This Bond Legislation shall take effect and be in force immediately upon its adoption.

Adopted \_\_\_\_\_

Attest: \_\_\_\_\_  
Clerk

(SEAL)

\_\_\_\_\_  
Presiding Officer

Approved: \_\_\_\_\_  
Mayor

Approved as to form and  
legality: \_\_\_\_\_  
City Attorney